89-223

Supreme Court, U.S.
FILED
JUL 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

MARTIN A. SCHOTTENFELD,
- PETITIONER -

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

THOMAS J. GALVIN,
- RESPONDENTS -

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

submitted by :
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petitioner-pro se
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QUESTIONS PRESENTED FOR REVIEW

A. WHETHER A PROMISE CONTAINED IN A PENSION PLAN, IN EFFECT DURING THE TIME OF EMPLOYMENT OF AN EMPLOYEE WHO IS A PARTICIPANT OF THIS PENSION PLAN, IS BINDING AND ENFORCEABLE, REGARDLESS OF THE SUBSEQUENT AMENDMENTS MADE BY THE EMPLOYER TO THIS PENSION PLAN, REDUCING OR ELIMINATING THE INITIAL PROMISE.

B. WHETHER THE COURT BELOW HAS DECIDED PROPERLY OR IMPROPERLY IN THE PRESENT CASE, WHEN CONNECTING THE INITIAL PENSION PLAN WITH THE SUBSEQUENT AMENDMENTS MADE BY THE RESPONDENTS, REDUCING THE BENETIFS, THEN APPLYING THOSE AMENDMENTS TO THE PETITIONER, WHO IS A PARTICIPANT OF THE ORIGINAL PENSION PLAN.

C. WHETHER THE COURT BELOW HAS RESOLVED PROPERLY OR IMPROPERLY THE PRESENT CASE, WHEN TOTALLY IGNORING AND NOT DECIDING UPON ANY OF THE LEGAL PROCEDURAL MATTERS BROUGHT UP BY THE PETITIONER.

TABLE OF CONTENTS

		Page
QUESTIONS PRESENTED FOR REVIEW		(i)
TABLE OF AUTHORITIES		(iiiii)
	PETITION	1
I.	OPINION BELOW	2
II.	JURISDICTION	3
III.	STATEMENT OF THE CASE	3
IV.	REASONS FOR GRANTING THE WRIT	9
	A. ERROR OF LAW	9
	B. THIS CASE PROVIDES THE SUPREME COURT OF THE UNITED STATES WITH THE OPPORTUNITY TO RESOLVE CONFLICTING DECISIONS BY HIGHER FEDERAL COURTS IN SIMILAR CASES	12

C. OMISSION BY THE DISTRICT COURT AND BY THE COURT OF APPEALS FOR THE SECOND CIRCUIT TO CONSIDER AND TO DECIDE UPON ANY OF THE LEGAL PROCEDURAL MATTERS BROUGHT UP BY THE PETITIONER 16

V. CONCLUSION 18

TABLE OF AUTHORITIES

	Page
STATUTES	
E.R.I.S.A., Section 1132 (a) (1) (B), U.S.C. 29	3,11
62 Stat. 928, Section 1254 (1), U.S.C. 28	3
FEDERAL RULES OF CIVIL PROCEDURE	
Rule 56	17
CASES	
Mahoney et al. v. Atlas Tack Corporation (581 F.2-d 1)	14,15
U.S. Supreme Court Order No. 78-936	15

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Martin A. Schottenfeld, respectfully prays that a writ of certiorari be issued to review the order and decision of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on March 3, 1989.

I.

OPINION BELOW

The order and decision of the Court of Appeals for the Second Circuit, affirming the judgment of the District Court for the reasons set forth in the Memorandum Opinion of the District Court, is attached as Exhibit No. 2 (pages P3-P6). No separate opinion was issued by the Court of Appeals for the Second Circuit. The Memorandum Opinion of the District Court for the Southern District of New York is attached as Exhibit No. 3 (pages P7-P18).

II.

JURISDICTION

The order and decision of the Court of Appeals for the Second Circuit was filed on March 3, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C., Section 1254(1)

III.

STATEMENT OF THE CASE

Petitioner has brought the lawsuit at the District Court for the Southern District of New York, pursuant to Section 1132 (a) (1) (B) of E.R.I.S.A. of 1974 with subsequent modifications,. U.S.C. 29.

Petitioner has worked with the respondent CON EDISON as a permanent employee from June 1969 until July 1, 1986, when petitioner retired at the age

of 67 (P64, No. 2). The second respondent, Thomas J. Galvin, is the Plan Administrator of Con Edison's pension plans (P64, No. 4).

The 1975 Con Edison pension and Benefits plan, of which the petitioner is a participant (P64, No. 3) provides a clear definition of the accredited service for the computation of a retirement pension, promising that:

- "Accredited service for the computation of a pension will be the total of the months and years of service the employee was continuously in the employ of the Company in other than a temporary status" (P43, (B) (1)).

The definition of the Accredited service, provided clearly in the 1975 Con Edison

pension and Benefits plan, does not mention any restriction or limitation by age.

Subsequent to 1975, the respondent Con Edison made amendments to the 1975 pension and Benefits plan, limiting the accredited service for the computation of a pension to age 65. But in the new 1983 Con Edison Retirement Plan for Management Employees, effective 1/1/1983, containing those amendments, is also included a special provision of "Benefits for participants of the prior plan" (P41), which exempts the participants of the prior 1975 pension plan from being sujected to the amendments limiting the accredited service to age 65 and provides the continuation of the old 1975 formula of computation of a pension based on the

"Total Salary prior to Retirement," for participants of the prior 1975 pension plan.

The respondents have refused to comply with the special provision in the 1983 Retirement plan for Management Employees (P41) and have limited the computation of the accredited service for petitioner's pension to age 65, based on the amendments to the pension plan (P61).

The correct Revised computation of petitioner's pension, made by petitioner, is based on the Definition of the Accredited service, provided in the 1975 Con Edison pension and Benefits plan and on the formula reproduced in the 1983 Con Edison Retirement Plan for Management Employees, booklet of 40 pages, page No. 5, the petitioner being a participant of

the prior 1975 Pension and Benefits Plan (P58; P43 (B) (1); P41 "Benefits for the participants of the prior plan"; P64, No. 3).

On 12-22-1987 the petitioner has moved for partial Summary Judgment (P25).

On 2-17-1988 the respondents have filed a Cross-Motion for Summary Judgment. The Memorandum Opinion and Judgment of the District Court were entered on 8-26-1988, denying petitioner's Motion for partial Summary Judgment and granting respondents' Cross-Motion for Summary Judgment (P7-P18;P21).

On 9-23-1988 the petitioner has filed a Notice of Appeal from the Opinion and Order and from the Judgment of the District Court (P23).

On 3-03-1989 the Court of Appeals for the

Second Circuit has affirmed the Judgment of the District Court, relying substantially on the Opinion of the District Court (P3-P6).

IV.

REASONS FOR GRANTING THE WRIT

A. ERROR OF LAW

The definition of the "Accredited service for computation of a pension," contained in the 1975 Con Edison Pension and Benefits plan, is clear and complete (P43, (B) (1)). With this clear definition, the respondents have promised that "the total of the months and years of service... in other than a temporary status" will be accredited for the computation of a pension. There is no one word mentioned in the above definition about the retirement age or about any limitation by age.

The District Court has altered the above clear and complete definition of

the "Accredited service for computation of a pension," by adding the retirement age of 65 and by limiting the Accredited service to age 65 (P9, footnote (1)).

The respondents have amended the 1975 pension plan, effective September 1980, modifying the definition of the "Total Salary" in terms of years of "accredited service" to be limited to "prior to Normal Retirement Date," that means prior to age 65 (P10, 1st paragraph). It appears clear, that the definition of "Accredited service for computation of a pension," contained in the 1975 pension and Benefits Plan" did not make any limitation by age and that the respondents have introduced the limitation to age 65 in the 1980 Amendment to the pension plan.

The Opinion of the District Court that the 1980 Amendment made by the respondents to the pension plan, would be applicable to the petitioner, who is a participant of the 1975 Con Edison pension and Benefits Plan is legally erroneous (P11-P12, 1st paragraph).

The promise contained in the 1975 Con Edison pension and Benefits Plan, that all the months and years of service...in other than a temporary status" will be accredited for the computation of a pension, is clear, binding and legally enforceable and should not be altered (Section 1132, (a) (1) (B) of E.R.I.S.A., U.S.C. 29).

B. THIS CASE PROVIDES THE SUPREME COURT OF THE UNITED STATES WITH THE OPPORTUNITY TO RESOLVE CONFLICTING DECISIONS BY HIGHER FEDERAL COURTS IN SIMILAR CASES.

In the 1983 Con Edison Retirement Plan for Management Employees - booklet of 40 pages, page No. 5 - was included a special provision entitled "Benefits for participants of the prior plan" (P41). In this special provision was reproduced the old formula for computation of a retirement pension, based on the "Total Salary prior to retirement," applicable to participants of the prior 1975 Con Edison Pension and Benefits Plan. This special provision had the scope to exempt the participants of the prior 1975 pension plan from being subjected to the

amendments to the 1975 pension plan, made by the respondents and contained in the 1983 Retirement Plan for Management Employees. The amendments contained in the 1983 Retirement Plan for Management Employees have limited the accredited service for computation of a pension to age 65.

In the Opinion of the District Court was made a nexus between the special provision of "Benefits for participants of the Prior Plan," contained in the 1983 pension plan - booklet of 40 pages, page No. 5 - and the amendments to the 1975 pension plan, contained in the 1983 pension plan (P41; P11, P12, 1st paragraph; P13-P16).

The nexus created by the District Court between the special provision of

"Benefits for Participants of the Prior Plan" (P41) and the amendments made by the respondents to the 1975 pension plan, which amendments are contained in the 1983 pension plan, limiting the accredited service to age 65, has annihilated the meaning and the scope of the special provision of "Benefits for participants of the prior plan," contained in the 1983 pension plan (P41; P124, No. 8; P125-P128).

In the case Mahoney et al. v. Atlas Tack Corporation (581 F.2-d 1), the U.S. Court of Appeals for the First Circuit has decided that promises made in a pension plan are and remain binding and enforceable, even if the pension plan is subsequently modified or terminated. This decision was upheld by the Supreme

Court of the United States. Petition for writ of certiorari was denied, with the Order No. 78-936.

The Decision of the Court of Appeals for the Second Circuit in this case, dated March 3, 1989 (P3), is conflicting with the Decision of the Court of Appeals for the First Circuit in the case Mahoney et al. v. Atlas Tack Corporation, 581 F.2-d 1, which was upheld by the Supreme Court of the United States, with the Order No. 78-936.

The Supreme Court of the United States has now the opportunity to review the decision of the Court of Appeals for the Second Circuit in the present case and to resolve the conflicting decisions in similar cases.

C. OMISSION BY THE DISTRICT COURT AND BY THE COURT OF APPEALS FOR THE SECOND CIRCUIT TO CONSIDER AND TO DECIDE UPON ANY OF THE LEGAL PROCEDURAL MATTERS BROUGHT UP BY THE PETITIONER.

The petitioner has brought up before the District Court, as well as before the Court of Appeals for the Second Circuit, numerous procedural matters based on the Federal Rules of Civil Procedure (P68 to P80; P107 to P113, First paragraph).

Both Courts Below have not considered and not decided upon any of the legal procedural matters brought up by the petitioner. Particularly it is to be noted that both Courts Below have not considered at all and have not decided upon petitioner's objections to respondents' Cross-Motion for Summary

Judgment under the Rule 56 of the Federal Rules for Civil Procedure (P73; P108).

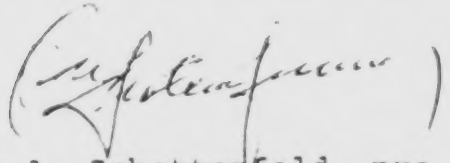
V.

CONCLUSION

In light of the foregoing, it appears clear that the petition for writ of certiorari is well reasoned and fully justified.

This Court has an important opportunity to decide about the enforceability of promises made in a pension plan during the employment and to resolve conflicting decisions of higher Federal Courts on this matter, especially the conflicting decision of the Court of Appeals for the Second Circuit in this case.

Respectfully submitted,



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Dated: June 28, 1989

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

MARTIN A. SCHOTTENFELD,

- PETITIONER -

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

THOMAS J. GALVIN,

- RESPONDENTS -

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

---

submitted by :
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TABLE OF CONTENTS

Exhibit No.	Docket No. at the D.C.	Description and page(s)
1	-	Order No. A-929, signed by the Honorable Justice MARSHALL, granting an extension of time for filing a petition for writ of certiorari. P1-P2
2	25	Order of the U.S. Court of Appeals for the Second Circuit, dated March 3, 1989, affirming the Judgment of the District Court. P3-P6
3	20	Opinion and Order # 63038 of the District Court, entered on 8-26-89. P7-P18

Exhibit No.	Docket No. at the D.C.	Description and page(s)
4	14	Order of the District Court entered on 1-26-88. P19-P20
5	21	Judgment of the District Court, entered on 8-26-88. P21-P22
6	22	Notice of Appeal, filed on 9-23-88, at the District Court for the Southern District of New York. P23-P24
7	12	Notice of Motion for partial summary judgment, filed by petitioner (plaintiff) on 12-22-87. P25-P27

Exhibit No.	Docket No. at the D.C.	Description and page(s)
8	12	Affirmation in support of the Motion, filed by petitioner (plaintiff) on 12-22-87. P28-P33
9	12	Statement of the material facts, under Local Rule 3 (g), filed by petitioner (plaintiff) with the Motion on 12-22-87. P34-P36
10	12	page No. 5 of the Con Edison Retirement Plan for Management Employees- booklet of 40 pages- effective January 1, 1983. P37-P42

Exhibit No.	Docket No. at the D.C.	Description and page(s)
11	12	pages No. 14, 15 and 16 of the Con Edison pension and Benefits plan, effective 8-1-1975. P43-P48
12	12	pages No. 2, 5 and 6 of Con Edison's Answers to petitioner's (plaintiff's) First set of Interrogatories P49-P53
13	13	petitioner's (plaintiff's) Memorandum filed on 1-4-1988. P54-P57

Exhibit No.	Docket No. at the D.C.	Description and page(s)
14	13	Revised computation of petitioner's Retirement pension, filed by petitioner (plaintiff) with the Memorandum on 1-4-1988. P58-P60
15	12	Computation of petitioner's actual retirement pension, made by the respondents (defendants). P61-P62
16	15	Statement under Local Rule 3 (g) filed by the respondents (defendants), attached to the Cross-Motion for Summary Judgment, on 2-17-88. P63-P67

Exhibit No.	Docket No. at the D.C.	Description and page(s)
17	18	Memorandum of Law in opposition to defendants' Cross-Motion for Summary Judgment, in response to defendants' opposition to plaintiff's Motion for partial Summary Judgment and in support of plaintiff's Motion for partial Summary Judgment, filed by petitioner on 3-11-1988. P68-P87
18	19	Affidavit of Martin A. Schottenfeld. P88-P89

Exhibit No.	Docket No. at the D.C.	Description and page(s)
19	17	Con Edison Memorandum dated January 1984, presented to and signed by petitioner with clear disagreement on 4-24-84. P90-P92
20	-	Appellant's Brief to the U.S. Court of Appeals for the Second Circuit, filed by petitioner on 12-15-1988. P93-P130
21	7	Amended complaint filed by petitioner (plaintiff) on 10-15-1987. P131-P138

Exhibit No.	Docket No. at the D.C.	Description and page(s)
22	-	Docket Entries at the District Court for the Southern District of New York. P139-P145

SUPREME COURT OF THE UNITED STATES

No. A-929

Martin A. Schottenfeld,

Petitioner

v.

Consolidated Edison Company of New York, Inc. and Thomas J. Galvin

---

O R D E R

UPON CONSIDERATION of the application of the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including

July 1, 1989.

/s/ Thurgood Marshall

Associate Justice of the Supreme

Court of the United States

Dated this 25th

day of May, 1989.

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 3rd day of March, one thousand nine hundred and eighty-nine.

SDNY

87 civ-2650

Sprizzo

PRESENT:

HONORABLE WILFRED FEINBERG

HONORABLE WILLIAM H. TIMBERS

HONORABLE FRANK X. ALTIMARI

Circuit Judges.

----------X

MARTIN A. SCHOTTENFELD

Plaintiff-Appellant,

- against - 88-7827

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THOMAS J. GALVIN,

Defendants-Appellees.

----------X

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court is AFFIRMED substantially for the reasons

set forth in the opinion of Judge Sprizzo, dated August 19, 1988.

Schottenfeld v. Consolidated Edison Co. of New York, Inc.

88-7827

/s/WILFRED FEINBERG

/s/WILLIAM H. TIMBERS

/s/FRANK X. ALTIMARI

Circuit Judges

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise

relied upon in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

MARTIN A. SCHOTTENFELD,

Plaintiff Pro Se,

-against- 87 Civ. 2650 (JES)

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and THOMAS J. GALVIN, MEMORANDUM OPINION AND ORDER

Defendants.

----------X

SPRIZZO, D.J.

Plaintiff pro se Martin Schottenfeld brings this action pursuant to section 502(a) (1) (B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132 (a) (1) (B) (1982). Named as defendants are the Consolidated Edison Company of New York, Inc. ("Con Ed"), plaintiff's former employer, and Thomas

J. Galvin, Plan Administrator for the Retirement Plan for Management Employees. Plaintiff alleges that defendants improperly calculated his pension benefits by failing to credit plaintiff for the 23 months of service between his 65th birthday and the date he retired. The parties have filed cross-motions for summary judgment.

The material facts are not in dispute. Plaintiff was continuously employed by Con Ed from June 30, 1969 until he retired on July 1, 1986, just prior to his 67th birthday. See Amended Complaint at 1; Plaintiff's Statement of the Material Facts at ¶ 1; Defendants' Rule 3(g) Statement at ¶¶ 1-2. Plaintiff contends that the governing pension plan requires that all years of continuous service be credited for computation of

pension benefits. Examination of the undisputed evidence, however, reveals that plaintiff has misread the terms of the plan.

Prior to 1978, Con Ed's pension plan provided pension benefits based upon an employee's age at retirement, years of service, and earnings. See Affidavit of Sheldon E. Reichard ("Reichard Aff.") at ¶¶ 3-4. The plan also provided for a mandatory retirement age of 65. Id.; Defendants' ("Def.") Ex. A at 5. Thus, only service prior to age 65 could be credited in calculating pension benefits.[1]

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1. Plaintiff apparently bases his argument that all years of continuous service are to be credited for pension purposes on the plan in effect in 1975,

Pursuant to a 1978 amendment to the Age Discrimination in Employment Act ("ADEA") prohibiting mandatory employment prior to age 70, the pension plan was amended effective September 1980 to change the mandatory retirement age to age 70. See Def. Ex. C at 9. The plan was also amended to define the "Total Salary" to be used in calculating pension benefits in terms of years of accredited

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which defined "accredited service" as "the total of the months and years of service the employee was continuously in the employ of the Company in other than a temporary status." See Plaintiff's Ex. P-2 at 14. However, as noted above, that version of the plan also provided for mandatory retirement age of 65. See Def. Ex. A at 5.

service "prior to Normal Retirement Date." Id. at 3. "Normal Retirement Date" was defined as "the first day of the month following the participant's attainment of age 65." Id. at 8. To make it clear that years of service after age 65 would not be credited for pension purposes, the definition of "Accredited Service" was also amended to limit that term to service "prior to Normal Retirement Date [Age 65]." Reichard Aff. at ¶ 5; Def. Ex. C at 4. These provisions remained in the pension plan during the remaining years of plaintiff's employment. Reichard Aff. at ¶ 5; see also id. ¶ 6; Def. Ex. D at 4-5, 9; Def. Ex. F at 3-4, 7, 12.

Thus, it is clear from a review of the documents discussed above that at no time during plaintiff's employment did

the plan provide that months or years worked after attaining age 65 would be credited for pension calculation purposes. It follows that defendants' calculation of plaintiff's pension benefits must be upheld. See, e.g., Schwartz v. Newsweek, Inc., 827 F.2d 879, 881 (2d Cir. 1987); Miles v. New York State Teamsters Conference, 698 F.2d 593, 599 (2d Cir.), cert. denied, 464 U.S. 829 (1983).

Although plaintiff disputes defendants' contention that he was notified "[o]n a number of occasions" of the changes in the pension plan, see Plaintiff's [Reply] Memorandum of Law ("Pl. Reply") at 3-4; Reichard Aff. at ¶ 12, plaintiff does not dispute that in 1984, three months before his 65th birthday, he attended a pre-retirement interview and was informed that his pension would

remain unchanged should he continue to work beyond age 65. See Reichard Aff. at ¶ 7. Moreover, plaintiff signed a memorandum memorializing that interview. Id.; Pl. Reply at 3. The memorandum clearly provides that "[a]s permitted by the law, [plaintiff] will not accrue pension credit after [his] normal retirement date, which at Con Edison is the first day of the month following . . . attainment of age 65." Def. Ex. E. Above his signature on the memorandum, plaintiff wrote "I disagree." Id.

Plaintiff's signature and statement on the memorandum make it unquestionably clear that plaintiff was aware of the amendments to the pension plan prior to his retirement and of defendants' view that those amendments did not entitle him to accrue pension credit based on service

after his 65th birthday. The fact that plaintiff disagreed with that interpretation, as indeed this litigation demonstrates, in no way detracts from the fact that plaintiff had notice of defendants' interpretation of the plan at the time he retired and was in no way prejudiced by the claimed lack of notice. Compare Govoni v. Bricklayers, Masons and Plasterers, 732 F.2d 250, 252-53 (1st Cir. 1984).[2]

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2. Plaintiff argues that the terms of a booklet which he received govern calculation of his benefits. Plaintiff cites to page 5 of the booklet, which provides that participants employed by Con Ed in 1982 "will be entitled to a minimum benefit equal to the pension [they] would have received under the prior plan," and

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that "Total Salary" as used to calculate benefits "represents . . . earnings for 14 years prior to retirement . . . ." Plaintiff's Ex. P-1 at 5; Def. Ex. I at 5. However, the booklet also states that "[i]f you choose to continue working for the Company past your normal retirement date [defined above as age 65], . . . your pension will be equal to the amount you would have received had you retired at normal retirement date." Def. Ex. I at 2. Therefore, the booklet also clearly put plaintiff on notice that service after his 65th birthday would not be credited in calculating his pension. Moreover, as noted above, no prior pension plan provided pension credit for service after age 65.

In addition, the booklet cautions that it

"describes only the highlights of the plan" and that in the event of a conflict, the official plan controls. See id. at 20-21. Thus, even if the booklet conflicted with the official plan text, which it does not, the official plan text would control. See Kolentus v. Avco Corp., 798 F.2d 949, 958 (7th Cir. 1986), cert. denied, 107 S.Ct. 878 (1987).

For the reasons set forth above, plaintiff's motion for partial summary judgment must be denied, and defendants' cross-motion for summary judgment must be granted. The Clerk of Court shall enter judgment accordingly and close the above-captioned action.

It is SO ORDERED.

Dated: New York, New York
August 19, 1988

/s/ John E. Sprizzo
United States District Judge

APPEARANCES

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Attorney for Defendants
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New York, New York 10003

JONATHAN A. FIELDS, ESQ.
Of Counsel

Appellant's Exhibit No.

A-17

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

MARTIN A. SCHOTTENFELD,

-against- 87 Civ. 2650 (JES)

CONSOLIDATED EDISON COMPANY, ORDER

Defendant(s).

----------X

Plaintiff Pro Se and Counsel for defendant in the above-captioned action having appeared before this Court at Pre-Motion Conference on January 11, 1988, and the Court having considered all issues raised at the Pre-Motion Conference, it is

ORDERED that the defendant shall cross-move for summary judgment and respond to plaintiff's motion for summary

judgment on or before February 12, 1988; and it is further

ORDERED that plaintiff shall respond to defendant's motion on or before March 11, 1988; and it is further

ORDERED that defendant shall reply to plaintiff's response on or before April 8, 1988; and it is further

ORDERED that Oral Argument shall be held on June 10, 1988 at 10:30 AM.

Dated: New York, New York
January 13, 1988

/s/ John E. Sprizzo
United States District Judge

SOUTHERN DISTRICT OF NEW YORK Sprizzo, J.

----------X

MARTIN A. SCHOTTENFELD, DOC # 21

Plaintiff Pro Se,

against 87 Civil 2650 (JES)

CONSOLIDATED EDISON JUDGMENT

COMPANY OF NEW YORK INC.

and THOMAS J. GALVIN,

Defendants.

----------X

All parties having moved for summary judgment, and the said motion having come before the Honorable JOHN E. SPRIZZO, U.S.D.J., and the Court thereafter on August 22, 1988, having handed down its memorandum opinion and order (#63038); denying plaintiff's motion for partial summary judgment; granting defendants' cross-motion for summary judgment; directing the Clerk of

the Court to enter judgment accordingly and closing the above-captioned action, it is,

ORDERED, ADJUDGED AND DECREED: That the action be and it is hereby dismissed.

Appellant's Exhibit No.

A-25

DATED: NEW YORK, NEW YORK

August 24, 1988 /s/Raymond F. Burghardt

Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 8-26-88.

Appellant's Exhibit No.

A-27

IN THE UNITED STATES DISTRICT COURT

OF THE SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff,

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, Inc. and THOMAS J. GALVIN,

Defendants.

NOTICE OF APPEAL

87 CIV 2650 (JES)

Notice is hereby given that Martin A. SCHOTTENFELD, plaintiff, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum Opinion and Order # 63038 and Judgement of the District Court SDNY, all of them

entered on Docket on 8-26-1988, denying plaintiff's motion for partial summary judgement and granting defendants' cross-motion for summary judgement and dismissing hereby the action.
The final judgement in this action was entered on Docket on the 26-th day of August 1988.

Plaintiff - appellant,

/s/Martin A. Schottenfeld

Martin A. Schottenfeld
802 West 190-th Street Apt. 3 D
New York, N.Y. 10040

Date : September 23, 1988

Appellant's Exhibit No.

A-7

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff, 87 Civ. 2650 (JES)

against: NOTICE OF PLAINTIFF'S

CONSOLIDATED EDISON MOTION FOR PARTIAL

COMPANY OF NEW YORK, SUMMARY JUDGEMENT

Inc. and FOR PLAINTIFF

THOMAS J. GALVIN,

Defendants.

SIRS :

Please take Notice that upon the annexed affirmation in support of the Motion, affirmed on December 22, 1987, the plaintiff will move this Court, Judge John E. SPRIZZO, U.S.D.J., in Room 129,

United States Courthouse, Foley Square, New York, New York 10007, on January 8, 1988, at 4:30 PM, or at the nearest date thereafter as the Motion can be heard, to be scheduled by the Court, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting :

PARTIAL SUMMARY JUDGEMENT FOR PLAINTIFF.

New York, December 22, 1987

Plaintiff - Pro se,

/s/Martin A. Schottenfeld

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Tel. (212) 928-6785

Copies to :

- Mr. Charles E. McTiernan, Jr.
  Attorney for both defendants
  c/o Con Edison - Law Department

4 Irving Place Room 1815 S

New York, N.Y. 10003

Appellant's Exhibit No.

A-8

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff, 87 Civ. 2650 (JES)

against : PLAINTIFF'S AFFIRMATION

CONSOLIDATED EDISON IN SUPPORT OF THE

COMPANY OF NEW YORK, MOTION FOR PARTIAL

Inc. and SUMMARY JUDGEMENT

THOMAS J. GALVIN, FOR PLAINTIFF

Defendants

Martin A. Schottenfeld, plaintiff pro se, makes the following affirmation under the penalties of perjury :

I, Martin A. Schottenfeld, am the plaintiff in the above entitled case and respectfully move this Court to issue an

Order and Partial Summary Judgement granting :

1) to be determined that the plaintiff is entitled to receive a pension of $733.50 monthly, plus applicable cost-of living adjustments, effective July 1, 1986, on the basis of the formula provided in the Con Edison Retirment Plan for Management Employees, effective January 1, 1983, booklet of 40 pages, page # 5 (Exhibit P-6)

2) to obligate the defendants, jointly or each of the defendants, to pay to the plaintiff :

   a) the difference between the pension determined under (1) above and the actual pension currently paid to the plaintiff, retroactively from July 1, 1986, with interest of 9%

until 10/1/87, 10% from 10/1/87 until 1/1/88 and 11% after 1/1/88, for delayed payments;

b) the trial costs incurred to the plaintiff, in the amount of $ 400.-

3) plaintiff's claim for damages to be heard before a Jury;

4) plaintiff's claim for reasonable attorney's fees to be decided after the Jury trial.

The reason why I am entitled to the relief I seek above, is the following : The actual pension, currently paid by the defendants to the plaintiff, is far below the pension committed to by the defendants under the formula provided in the Con Edison Retirement Plan for Management Employees, effective 1/1/1983, booklet of 40 pages, page # 5, section entitled "Benefits for Participants of the Prior

Plan". There is no genuine issue to be tried on the material facts, regarding the computation of the pension under the formula provided in the Con Edison Retirement Plan for Management Employees, effective 1/1/1983, booklet of 40 pages, page # 5, section entitled "Benefits for Participants of the Prior Plan" (Exhibits P-1 and P-6) and the actual pension currently paid to the plaintiff (Exhibit P-5).

The formula provided in the Con Edison Retirement Plan for Management Employees, effective 1/1/1983 (Exhibit P-1) is in accordance with the "Determination of Accredited Service for Computation of a Pension", as provided in Con Edison Pension and Benefits Plan, effective 8/1/1975, pages 14 thru 16 (Exhibit P-2). Plaintiff is a participant of the Prior

Pension Plan (Exhibit P-3, Interrogatories Nr. 1 and 2).

The Con Edison Retirement Plan for Management Employees, effective 1/1/1983, is administered directly by the defendant Con Edison (Exhibit P-1, page # 17, sections "Plan Administration" and "Claims").

The defendant Thomas J. Galvin is an officer of Con Edison, in charge as Plan Administrator of the Con Edison Retirement Plan for Management Employees (Exhibit P-3, Interrogatories Nr. 7 and 8).

The Jurisdiction of the District Court is provided under E.R.I.S.A., Section 1132 (1) (B).

WHEREFORE, I respectfully request that the Court grant the within motion, as well as such other and further relief

that may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22, 1987

/s/Martin A. Schottenfeld

Martin A. Schottenfeld

Attachments :

- Plaintiff's Statement of the facts
- 7 Exhibits with a Listing

SCHOTTENFELD vs. CON EDISON and GALVIN

District Court SDNY 87 Civ, 2650 (JES)

Appellant's Exhibit No.

A-9

PLAINTIFF'S STATEMENT OF THE MATERIAL FACTS as to which there is no genuine issue to be tried.

The plaintiff presents the following material facts, as to which there is no genuine issue to be tried :

1) The plaintiff was employed with the defendant Con Edison from June 1969, until July 1, 1986, when the plaintiff retired (Answers to the Amended complaint by both defendants).

2) The plaintiff was a participant of the Con Edison Pension and Benefits Plan prior to December 31, 1982 and a participant of the Con Edison Retirement Plan for Management

Employees subsequent to January 1, 1983 (Exhibit P-3, Interrogatory Nr. 2).

3) The Con Edison Retirement Plan for Management Employees is administered by an officer of the defendant Con Edison and by Con Edison's employees (Exhibit P-1, page 17; Exhibit P-3, Interrogatory Nr. 8).

4) The defendant Thomas J. Galvin is the Plan Administrator of the Con Edison Retirement Plan for Management Employees (Exhibit P-3, Interrogatories Nr. 7 and 8).

5) The formula of computation the pension benefits for participants of the prior pension plan is provided in Con Edison Retirement Plan for Management Employees, effective January 1, 1983, booklet of 40 pages, page # 5, Section

"Benefits for Participants of the Prior Plan" (Exhibit P-1, page 5).

6) Plaintiff's salary history is shown in Plaintiff's Personal Record (Exhibit P-4).

Plaintiff,

/s/Martin A. Schottenfeld

Martin A. Schottenfeld

Con Edison Retirement Plan for Management Employees - booklet of 40 pages - effective January 1, 1983

Appellant's Exhibit No. A-10

period 1978 through 1982. Let's also assume that Social Security for this individual amounts to $8,500 a year. Using the pension formula shown above, here's how benefits for this employee will be figured:

$16,324 (55% X $29,680) minus
- 4,250 (50% X 8,500)
$12,074 Con Edison Pension

The employee in this example will have total retirement income from the plan and from Social Security of $20,574 annually if single (Con Edison pension of $12,074 plus $8,500 of Social Security), or $24,824 if married (Con Edison pension of

$12,074, primary Social Security of $8,500, plus $4,250 of spouse's Social Security at age 65).

In this example, the employee, who is single and a resident of New York City, has take-home pay before retirement in the vicinity of $22,500 (after subtracting federal, state and local income taxes and Social Security taxes). If the employee is married, his or her take-home pay would be about $25,000. In general, after retirement, individuals are subject to lower taxes for several reasons:

- Social Security benefits are not subject currently to income taxes.
- Pension benefits are not subject to Social Security tax.
- People over age 65 qualify for an additional personal exemption.
- Although state tax laws differ,

New York State and New York City exempt the first $20,000 of pension benefits from their income tax.

As a result, retirees often keep a larger share of their gross income after they retire than while they were working. In this example, for the single employee taxes after retirement may amount to only $1,500, resulting in after-tax retirement income of $19,074 ($20,574 less $1,500), replacing about 85% of pre-retirement take-home pay of $22,500. For the married employee, taxes would be about $1,000, resulting in after-tax retirement income of $23,824, replacing about 95% of the pre-retirement take-home pay of $25,100.

Example B - 40 Years of Service

If the employee had 40 years of service at age 65, he or she would be entitled to

an additional 5% (.5% per year times 10 years) of the 5 Year Average Salary, or $1,484.

This would mean a Con Edison pension of $13,558 ($12,074 plus $1,484), and a total retirement income of $22,058 including Social Security.

Example C - 15 Years of Service

To illustrate how the plan works when the employee has less than 30 years of service, let's assume that the employee retired with only 15 years of service with the Company. In this case, his or her pension would be exactly one-half the pension determined in Example A, or $6,037

$$\frac{15}{30} \times \$12,074 = \$6,037$$

Assuming this individual had a full career of employment, he or she would still qualify for $8,500 in Social

Security income for a total retirement income of $14,537 ($6,037 plus $8,500).

Benefits for Participants of the Prior Plan

If you were an employee of the Company on December 31, 1982, whether as a management or a weekly employee and retire under this plan, you will be entitled to a minimum benefit equal to the pension you would have received under the prior plan. In other words, your pension will be calculated two ways - according to the old and new pension formulas - and you will receive whichever amount is higher. The formula retained from the prior plan is as follows:

2.2% X Total Salary

Total Salary represents your earnings for 14 years prior to retirement, plus earnings in earlier years credited at your

earnings rate in the 14th year, provided that no more than 30 years of earnings are included. For employees with more than 30 years of service, the amount determined by this formula is increased by 1.5% for each year of service over 30. For most career employees, the new formula will produce higher benefits than the prior plan formula. By way of illustration, the employee in Example A above would receive a Con Edison pension of about $10,500 under the prior plan formula as compared with $12,074 under the new formula.

Con Edison Pension and Benefits Plan, effective August 1, 1975

Appellant's Exhibit No. A-11

(3) Where service is continuous, the years of vesting service shall not be less than the total of the months and years of service for the entire period.

B. Determination of Accredited Service for Computation of a Pension.

(1) Accredited service for the computation of a pension will be the total of the months and years of service the employee was continuously in the employ of the Company in other than a temporary status. For the purpose of determining service credit, a fraction of a month will be credited as one (1)

month. Each period of accredited service will be added and the total of such service will be used in computing the pension.

(2) The period constituting a break in service will be the number of months and years the employee was not in the employ of the Company that follow the month the employee was separated from the active payroll, up to but not including the month of reemployment.

(3) Employees who have acquired ten (10) years of accredited service shall be credited with all additional years and months of service with the Company regardless of a subsequent break in service. However, no period constituting a break in service will be included in the period of accredited service for computation of a pension.

(4) An employee with less than ten (10) years of accredited service who has a break in service equal to or greater than his years of accredited service will lose such prior accredited service unless the break in service was caused by layoff or disability. However, no period constituting a break in service will be included in the period of accredited service for computation of a pension.

(5) If an allowance has been paid based upon accredited service performed prior to August 1, 1975 and such period of accredited service is included in the computation of a pension under the Plan, the actuarial present value of the pension so computed will be reduced by the total of such allowance payments. The resulting present value,

as so reduced, of the pension will be the basis for determining the monthly pension.

(6) The application of the foregoing provisions solely as they pertain to accredited service prior to the effective date of the Plan shall not be interpreted so as to reduce the years and months of accredited service which would have been used in the computation of the employee's pension under the provisions of the plans.

(7) The effect of a cash-out of vested rights on accredited service will be to deny such credit for prior service until the cash-out is fully repaid, as provided in paragraph 4 G.

(8) A participant receiving a pension or annuity under the Plan or the plans will, if reemployed after August 1,

1975, continue to receive such pension or annuity payments during the period of employment. Upon subsequent retirement, there will be payable to such participant an addition to his pension or annuity based on the service accredited from the date of reemployment. Pension or annuity payments suspended under the provisions of the plans applicable to employees who were reemployed prior to August 1, 1975 shall continue to be suspended and shall otherwise be subject to the provisions of the plans.

C. Other Service Recognized for Vesting or Computation of a Pension.

Accredited service and vesting service shall include periods of interruptions in service due to:

(1) To the extent required by

law, active military, naval, marine or related service of the United States or the State of New York, or leaves of absence granted pursuant to Company policy for World War II defense employment (1941-1946);

(2) Absence because of illness under sick leave granted; or

Con Edison's Answers to Plaintiff's First Set of Interrogatories

Appellant's Exhibit No. A-12

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

Was Schottenfeld a management employee prior to December 31, 1982 and subsequent to January 1, 1983, until his retirement on July 1, 1986?

RESPONSE:

Yes.

INTERROGATORY NO. 2

Was Schottenfeld a participant of Con Edison Pension and Benefits Plan prior to December 31, 1982 and a participant of Con Edison Retirement Plan for Management Employees subsequent to January 1, 1983?

RESPONSE:

Yes.

INTERROGATORY NO. 3

Is the Con Edison Retirement Plan for Management Employees, edited in 1983, currently in effect?

RESPONSE:

Con Edison objects to this interrogatory on the ground that it is so vague, indefinite, and uncertain as not to be

Pension and Benefits Plan, edition July 1984, up to date?

RESPONSE:

To the extent this interrogatory seeks information relating to the Consolidated Edison Pension and Benefits Plan, Con Edison objects to this interrogatory on the ground that such informa-

tion is not relevant to the subject matter of this lawsuit, and that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous.

Subject to the foregoing objection, Con Edison states that, to the extent this interrogatory refers to the Consolidated Edison Pension and Benefits Plan, adopted effective August 1, 1975, and as subsequently amended, that plan has been amended effective January 1, 1983, and later amended by Amendment No. 1, dated May 3, 1984, Amendment No. 2, dated May 9, 1984, Amendment No. 3, dated September 12, 1985, Amendment No. 4, dated Apil 9, 1986, Amendment No. 5, dated October 15, 1986, Amendment No. 6, dated July 15, 1987, Amendment No. 7,

dated July 27, 1987, and Amendment No. 8, dated August 6, 1987.

INTERROGATORY NO. 7

Is Galvin the Vice President Employee Relations of Con Edison?

RESPONSE:

Yes.

INTERROGATORY NO. 8

Is the Vice President Employee Relations of Con Edison the Plan Administrator of the Con Edison Retirement Plan for Management Employees and of the Con Edison Pension and Benefits Plan?

RESPONSE:

Yes.

INTERROGATORY NO. 9

Are the retirement pension benefits under the Con Edison Retirement Plan for Management Employees, as well as under the Con Edison Pension and Benefits Plan,

determined by Con Edison employees of the Con Edison Retirement Programs Section?

RESPONSE:

To the extent this interrogatory seeks information relating to the determination of benefits under the Consolidated Edison Pension and Benefits Plan, Con Edison objects to this interrogatory on the ground that such information is not relevant to the subject matter of this lawsuit, and that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome.

Subject to the foregoing objection, Con Edison states that retirement pension benefits under the Consolidated Edison Retirement Plan for Management Employees and the Consolidated

Appellant's Exhibit No.

A-15

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff,

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, Inc. and THOMAS J. GALVIN,

Defendants

87 Civ. 2650 (JES)

PLAINTIFF'S MEMORANDUM TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT FOR PLAINTIFF

PLAINTIFF'S MEMORANDUM

connected with plaintiff's Motion for Partial Summary Judgement for Plaintiff

On plaintiff's Motion for Partial Summary Judgement for plaintiff, introduced on

December 22, 1987, Exhibit P-6 "Computation of Plaintiff's Retirement Pension", was made a slight mathematical error. The "Pivot Year" applicable should be the year 1973 - not the year 1972, as calculated by error.

In conformity with the Con Edison Pension and Benefits Plan, effective 8/1/75, the six months worked by plaintiff in 1986 - January 1, 1986 thru July 1, 1986 - are to be considered as one full year of service.(page 4 of Con Edison Pension and Benefits Plan, effective 8/1/1975). Therefore, the pivot year, that means the 14th year prior to retirement, should be the year 1973.

Plaintiff respectfully asks, that Exhibit P-6 to above plaintiff's Motion should be replaced with the attachd Exhibit P-6A.

Part (1) of the relief prayed for in the

above Motion to be granted, should be read correctly :

(1) to be determined that the plaintiff is entitled to receive a pension of $740.04 monthly, plus applicable cost-of-living adjustments, effective July 1, 1986, on the basis of the formula provided in the Con Edison Retirement Plan for Management Employees effective January 1, 1983, booklet of 40 pages, page # 5 (Exhibit P-6A).

All the other parts of the Relief prayed for on plaintiff's Motion for Partial Summary Judgement for plaintiff, introduced on December 22, 1987, remain unchanged.

January 4, 1988

Plaintiff,

/s/Martin A. Schottenfeld

P57

Martin A. Schottenfeld

SCHOTTENFELD vs. CON EDISON and GALVIN

District Court SDNY 87 Civ. 2650 (JES)

Appellant's Exhibit No.

A-16

Revised Computation of Plaintiff's Retirement Pension

under the Formula provided in the Con Edison Retirement Plan for Management Employees, effective January 1, 1983, booklet of 40 pages, page # 5, Section entitled "Benefits for Participants of the Prior Plan".

1986 - 36,700 x .083333 x 6 mos.

(1) Current Year Salary 18,350

85 - 36,700

84 - 35,700

83 - 34,000

82 - 32,000

81 - 29,800

80 - 27,400

79 - 25,300

(2) 14 Year Total 351,700

78 - 23,725

77 - 20,725

76 - 19,400

75 - 17,800

74 - 16,300

73 - 14,500 Pivot Year

Pivot 72 - 14,500

Sala- 71 - 14,500

ries 70 - 14,500

69 - 14,500 x .083333 x 7 mos.

8,548

(3) Pivot Year Total 51,958

(4) Total Salary Prior to Retirement 403,658

x 02.2

(5) Annual Basic Pension 8,880.48

(6) Monthly Basic Pension $ 740.04

Note: Applicable cost-of-living adjustments should be added to the Monthly Basic Pension, determined under (6) above.

Plaintiff,

/s/Martin A. Schottenfeld

Martin A. Schottenfeld

P61 P-5

Appellant's Exhibit No.

A-14

OLD "TOTAL SALARY" FORMULA

1984 - $34,000 x .083333 x 7 mos. =

19,833 (1) Current Year Total

83 - 34,000

82 - 32,000

81 - 29,800

80 - 27,400

79 - 25,300

78 - 23,725

77 - 20,725

76 - 19.400 - =

298,450 (2) 14 Year Total

75 - 17,800

74 - 16,300

73 - 14,500

72 - 13,500

71 - 12,500

70 - 11,500

69 - (11,500) x .083333 x 7 mos. =

6,708 (3) Pivot Year Total

(pivot salary)

324.991 (4) Total Wages

x 022

7,149.80 (5) Annual Pension

595.82 (6) Monthly Pension

Martin A. Schottenfeld

#27083

Appellant's Exhibit No.

A-19

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,)

Plaintiff, 87 Civ. 2650 (JES)

- against - DEFENDANTS

CONSOLIDATED EDISON RULE 3(g))

COMPANY OF NEW YORK, INC., STATEMENT

and THOMAS J. GALVIN,

Defendants.

Defendants, Consolidated Edison Company of New York, Inc. ("Con Edison"), and Thomas J. Galvin, pursuant to Rule 3(g) of the Local Rules of this Court, submit this statement of material facts as to which defendants contend there is

no genuine issue to be tried.

1. Plaintiff was born on July 18, 1919.

2. Plaintiff commenced employment as a management employee with defendant Consolidated Edison Company of New York, Inc., on June 30, 1969 and was continuously employed until he retired on July 1, 1986.

3. Plaintiff was a participant in the Consolidated Edison Pension and Benefits Plan on and prior to December 31, 1982, and a participant in the Consolidated Edison Retirement Plan for Management Employees subsequent to January 1, 1983.

4. Defendant Thomas J. Galvin is the Plan Administrator for the Consolidated Edison Retirement Plan for Management Employees and is also an officer of

Consolidated Edison Company of New York, Inc.

5. The Consolidated Edison Retirement Plan for Management Employees contains a formula for computing pension benefits of management employees who were participants in the Pension and Benefits Plan on December 31, 1982.

6. Plaintiff's salary history is as shown in plaintiff's Exhibit P-4 to his Motion for Partial Summary Judgment.

7. Prior to his retirement plaintiff received a copy of the January 1, 1983 Summary Plan Description booklet for the Consolidated Edison Retirement Plan for Management Employees but never asked to examine the official plan text of the Consolidated Edison Retirement Plan for Management Employees.

8. The Consolidated Edison Retire-

ment Plan for Management Employees does not provide credit for benefit calculation purposes for any employment beyond age 65.

9. Plaintiff was notified on several occasions prior to his retirement that the Consolidated Edison Retirement Plan for Management Employees does not provide credit for employment beyond age 65.

Dated: New York, New York
February 12, 1988

/s/Charles E. McTiernan, Jr.
CHARLES E. MCTIERNAN, JR.
Attorney for Defendants
Consolidated Edison
Company of New York, Inc.
and Thomas J. Galvin

4 Irving Place, Room 1815S

New York, New York 10003

(212) 460-2432

Of Counsel:

JONATHAN A. FIELDS,

(212) 460-3990

To: MARTIN A SCHOTTENFELD

Plaintiff pro se

802 West 190th Street, Apt. 3D

New York, New York 10040

(212) 928-6785

Appellant's Exhibit No.

A-22

IN THE UNITED STATES DISTRICT COURT

OF THE SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff,

vs. 87 Civ. 2650 (JES)

CONSOLIDATED EDISON

COMPANY OF NEW YORK,

Inc. and

THOMAS J. GALVIN,

Defendants.

PLAINTIFF'S MEMORANDUM OF LAW

I. IN OPPOSITION TO DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGEMENT

II. IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR

PARTIAL SUMMARY JUDGEMENT

III. IN SUPPORT FOR PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT.

Plaintiff, Martin A. Schottenfeld, submits this Memorandum of Law in opposition to defendants' Cross Motion for Summary Judgement, in response to defendants opposition to plaintiff's Motion for Partial Summary Judgement and in support for plaintiff's Motion for Partial Summary Judgement.

I. IN OPPOSITION TO DEFENDANTS CROSS MOTION FOR SUMMARY JUDGEMENT

A. Plaintiff objects to some of defendants' Exhibits.

Plaintiff objects to the following exhibits attached by defendants to the Cross Motion for Summary Judgement, for the reasons shown below:

1. Letter - Memo dated 10/25/1979 - Exhibit B.
   This document is unknown to plaintiff. Plaintiff has never received this letter, as clearly stated on plaintiff's deposition of 10/26/87.
2. Con Edison Restated Pension and Benefits Plan, as amended in September 1980 - Exhibit C.
   This document is unknown to plaintiff. The amendments to the 1975 Pension Plan are not applicable to plaintiff, who is a participant of the 1975 Con Edison Pension and Benefits Plan.
3. Con Edison Retirement Plan for Management Employees, effective 1/1/83 - book of 64 pages - Exhibit D.

This edition of the 1983 Con Edison Retirement Plan for Management Employees, book of 64 pages, is unknown to plaintiff, as clearly stated on plaintiff's deposition of 10/26/87, page 38, defendants' Exhibit J.

This document contains amendments to the 1975 Con Edison Pension and Benefits Plan, which amendments are not applicable to plaintiff, who is a participant of the 1975 Pension and Benefits Plan.

4. Con Edison Retirement Plan for Management Employees, effective 1/1/1983, with amendments to April 1986 - book of 64 pages - Exhibit F. This document is unknown to plaintiff and contains amendments to the 1975 Con Edison Pension and Benefits

Plan, which amendments are not applicable to plaintiff, as shown under (3) above.

5. Con Edison letter - Memo dated 4/10/1984 - Exhibit H.

This document is unknown to plaintiff. Plaintiff has never received this letter, as clearly stated on plaintiff's deposition of 10/26/1987.

Plaintiff respectfully asks that above documents, unknown to the plaintiff, be set aside and considered out of the record and out of the file.

6. Parts of the 1975 Con Edison Pension and Benefits Plan - Exhibit A.

Defendants have presented as Exhibit A only 6 pages of the 1975 Con Edison Pension and Benefits Plan, which are not strictly relevant to this case. Defendants have carefully omitted to

present the pages 14, 15 and 16 of the Con Edison Pension and Benefits Plan, effective 8/1/1975, showing the "Determination of Accredited Service for Computation of a Pension", which pages are strictly relevant in this case.

The pages 14, 15 and 16 of the Con Edison Pension and Benefits Plan, effective 8/1/1975, were presented by plaintiff as Exhibit P-2.

Defendants have omitted to make up and to present a listing of all the exhibits attached to defendants Cross Motion for Summary Judgement. In the case discrepancies will appear, plaintiff reserves the right to present eventually additional objections.

B. Defendants' Cross Motion for Summary Judgement is

inadmissible.

Defendants have inserted on the Statement made up in conformity with the Local Rule 3 (g), under (8) and (9) of this Statement, untrue allegations as "facts". Defendants' allegations made under (8) of this Statement, that the Con Edison Retirement Plan for Management Employees "does not provide credit for benefit calculation purposes for any employment beyond age 65", is untrue.

The Con Edison Retirement Plan for Management Employees, effective 1/1/1983, booklet of 40 pages, provides clearly that the old formula, reproduced in detail from the prior 1975 Con Edison Pension and Benefits Plan, on page 5 of the booklet, defining the "Total Salary prior to Retirement", will continue to be applied to participants of the prior 1975

Con Edison Pension and Benefits Plan. The plaintiff is a participant of the prior 1975 Con Edison Pension and Benefits Plan, as recognized by defendants under (3) and (5) of defendants' Rule 3 (g) Statement. Therefore, the old formula of the 1975 Pension Plan, reproduced on the Retirement Plan for Management Employees, effective 1/1/83, booklet of 40 pages, page 5 of this booklet, is applicable to plaintiff (Exhibit P-1 and also defendants' Exhibit I).

Defendants' allegation made under (9) of defendants' Rule 3 (g) Statement, that the plaintiff would have been "notified on several occasions that the Con Edison Retirement Plan for Management Employees does not provide credit for employment beyond age 65" is untrue.

True is, that on 4/24/1984, a defendants'

representative has requested from the plaintiff to consent to a cut of retirement benefits, by limiting the Total Salary to age 65 and to sign a correspondent letter. Plaintiff has not consented to the cuts of benefits and has signed the letter with the clear words, "I disagree". Defendants have never responded to plaintiff's clearly expressed disagreement (defendants' Exhibit E).

Defendants' insertion of untrue allegations as "facts", under (8) and (9) of defendants' Rule 3 (g) Statement, makes defendants Cross Motion for Summary Judgement ab initio inadmissible.

C. The Affidavit of Sheldon E. Reichard, dated February 12, 1988, contains untrue allegations of "fact" and

erroneous interpretations of law.

The Affidavit of Sheldon E. Reichard, which was made up by defendants in view of defendants' Cross Motion for Summary Judgement, contains untrue allegations of "fact" and erroneous interpretations of law.

The allegation made by Mr. Reichard under (11) on page 7 of Mr. Reichard's Affidavit, that "the pension plans in which plaintiff participated did not provide credit for an employee's continued employment beyond age 65" is untrue. The 1975 Con Edison Pension and Benefits Plan, of which plaintiff is a participant, provides clearly under "Determination of Accredited Service for Computation of a Pension", pages 14 through 16 of the 1975 Con Edison Pension Plan, that

all the years and months of continuous service with the Company, other than on a temporary status, will be accredited for the computation of a pension (Exhibit P-2). But Mr. Reichard contended under (13) on page 9 of the Affidavit, that "Exhibit P-2 is based on an obsolete and inapplicable version of the 1975 pension plan." This interpretation of law made by Mr. Reichard is totally erroneous and irresponsible. The defendants have carefully omitted to present the pages 14 thru 16 of the 1975 Pension Plan with defendants' Exhibit A. Furthermore, the Con Edison Retirement Plan for Management Employees, effective 1/1/1983, booklet of 40 pages, provides clearly that the old formula of the prior 1975 Pension Plan, reproduced in detail on page 5 of the booklet, will continue to be applied to

participants of the prior 1975 Pension Plan. The old formula provides the computation of the pension on the basis of the "Total Salary prior to retirement" (Exhibit P-1 and also defendants' Exhibit I, page 5). Mr. Reichard's allegation that plaintiff would have been advised "on a number of occasions" that employees cease to accrue credits for pension purposes at age 65 (number 12, page 7, of Mr. Reichard's Affidavit) is untrue. The Affidavit of Mr. Reichard contains erroneous interpretations of law, including Mr. Reichard's misinterpretation of the clear formula for computation of pension benefits for participants of the Prior Pension Plan, provided in detail on Con Edison Retirement Plan for Management Employees, effective January 1, 1983, booklet of 40 pages, page 5 (Exhibit P-1

and also defendants' Exhibit I).

Mr. Reichard's interpretations that the amendments to the 1975 Pension Plan, which amendments were made unilaterally by defendants, would be applicable to plaintiff, who is a participant of the 1975 Con Edison Pension and Benefits Plan, are erroneous.

Due to the numerous untrue allegations of "fact" and erroneous interpretations of law, contained in the Affidavit of Mr. Reichard, plaintiff respectfully asks that the Affidavit of Sheldon E. Reichard be set aside and disregarded.

II. IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT

A. The amendments to the 1975 Pension and Benefits Plan are not applicable to

plaintiff

The 1975 Con Edison Pension and Benefits Plan is the only complete plan document applicable to plaintiff, who is a participant of the prior 1975 Con Edison Pension Plan, effective August 1, 1975. Pages 14 thru 16 of the 1975 Con Edison Pension Plan provide in detail the "Determination of Accredited Service for Computation of a Pension" (Exhibit P-2). The only requirement for accredited service for computation of a pension is that the employee has performed the service on a continuous basis and in other than a temporary status. This requirement was met by plaintiff, as recognized by the defendants.

The validity of the old formula of computation pension benefits, provided in the 1975 Con Edison Pension and Benefits

Plan, was confirmed by defendants in the 1983 Con Edison Retirement Plan for Management Employees, effective 1/1/1983, booklet of 40 pages, page 5, by providing that the old formula of computation benefits will continue to be applied to participants of the Prior Plan (Exhibit P-1 and also defendants' Exhibit I). Defendants' contention that the amendments to the 1975 Pension Plan, made unilaterally by defendants, would be applicable to the plaintiff, who is a participant of the 1975 Con Edison Pension and Benefits Plan, is totally erroneous.

The amendments to the 1975 Pension Plan, like the 1980 "Restated Plan" and the new 1983 Con Edison Retirement Plan for Management Employees, as well as other amendments made by defendants unilater-

ally to the 1975 Pension Plan, prior to plaintiff's retirement, are not applicable to plaintiff.

B. Legal Argument

The defendants have made intensive and extensive efforts to search for discrepancies between the two editions of the 1983 Con Edison Retirement Plan for Management Employees, effective January 1, 1983 - the booklet of 40 pages, called by defendants "Summary Plan Description Booklet" and the book of 64 pages, called by defendants "Official Plan Text".
The only edition of the 1983 Con Edison Retirement Plan for Management Employees, effective January 1, 1983, known to the plaintiff, is the booklet of 40 pages, which was distributed to all the management employees, including to the plaintiff (defendants' Exhibit I).

The book of 64 pages was not distributed to the employees, as recognized by defendants.

Both editions of the 1983 Con Edison Retirement Plan for Management Employees - the book, as well as the booklet - contain amendments to the prior 1975 Con Edison Pension and Benefits Plan, reducing the pension benefits. Therefore, both editions of the 1983 Con Edison Retirement Plan for Management Employees, which contain amendments to the 1975 Pension Plan, which amendments were made unilaterally by defendants, are not applicable to plaintiff, who is a participant of the 1975 Con Edison Pension and Benefits Plan.

Defendants' intensive and extensive efforts to search for discrepancies between the two editions of the 1983

Retirement Plan for Management Employees, are useless, because the amended provisions of the 1983 Retirement Plan for Management Employees cannot be applied to plaintiff, who is a participant of the 1975 Con Edison Pension and Benefits Plan.

The amendments to the 1975 Pension and Benefits Plan can be applied only to future employees, who were or will be hired after the respective dates of those amendments, made unilaterally by defendants.

The only complete plan document applicable to plaintiff is the 1975 Con Edison Pension and Benefits Plan.

III. IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT

A. There are no genuine issues of facts to be tried

Plaintiff's Statement of the material facts, under Rule 3 (g), attached to plaintiff's Motion for Partial Summary Judgement, is correct.

Defendants have recognized that there are not in dispute any material factual issues (defendants' Opposition to plaintiff's Motion for Partial Summary Judgement, page 1).

B. Plaintiff's computation of the due pension, on Exhibit P-6A, is correct

The computation of plaintiff's due pension, on Exhibit P-6A, is based on the formula provided on the 1983 Con Edison Retirement Plan for Management Employees, effective 1/1/1983, page 5 (Exhibit P-1, also defendants' Exhibit I) and is correct.

x x

x

Conclusion

For the foregoing reasons, plaintiff respectfully asks to be granted plaintiff's Motion for Partial Summary Judgement and to be denied defendants' Cross Motion for Summary Judgement.

Plaintiff,

/s/Martin A. Schottenfeld
Martin A. Schottenfeld
802 West 190 Street Apt. 3 D
New York, N.Y. 10040
Tel. (212) 928-6785

Appellant's Exhibit No.

A-23

IN THE UNITED STATES DISTRICT COURT

OF THE SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff,

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, Inc. and THOMAS J. GALVIN,

Defendants.

87 Civ. 2650 (JES)

AFFIDAVIT OF MARTIN A. SCHOTTENFELD, IN SUPPORT OF PLAINTIFF'S MEMORANDUM OF LAW

Filed on March 11, 1988.

MARTIN A. SCHOTTENFELD, being duly sworn, deposes and says:

a) I am the plaintiff in the above captioned case.

b) I certify herewith that all the

statements I made in the PLAINTIFF'S MEMORANDUM OF LAW (1) IN OPPOSITION TO DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGEMENT (2) IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT AND (3) IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT, filed on March 11, 1988, are true and correct.

/s/Martin A. Schottenfeld
Martin A. Schottenfeld
802 West 190 Street, Apt. 3D
New York, N.Y. 10040
Tel. (212) 928-6785

Appellant's Exhibit No.

A-26

Con

Edison MEMORANDUM

January 1984

TO: Employees Attaining Age 65

FROM: Harry Terhune, Jr.

/s/Harry Terhune, Jr.

SUBJECT: Pension Credit for Service After Attaining Age 65

Age Discrimination in Employment Act amendments of 1978 (ADEA), in most cases, permit continued employment after the attainment of age 65.

As permitted by the law, you will not accrue pension credit after your normal retirement date, which at Con Edison is the first day of the month following your

attainment of age 65.

The pension benefits you earned to your normal retirement date will be suspended until your actual retirement date. However you will be eligible when you retire to all benefit improvements occurring between your normal retirement date and your actual retirement date.

You are required by the law to sign this memorandum, a copy of which will be provided to you, acknowledging that you have been informed that you will not accrue pension credit beyond your normal retirement date.

Any questions on this memorandum can be addressed, in writing, to Manager, Retirement Programs, Benefits Planning and Administration, Room 947-S, 4 Irving Place.

I acknowledge that I have read and under-

stand this memorandum.

Martin A. Schottenfeld

NAME PRINTED

27083

I disagree

/s/Martin A. Schottenfeld

SIGNATURE OF EMPLOYEE

4-24-1984

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

MARTIN A. SCHOTTENFELD,)

Plaintiff - Appellant)

Docket Number

88-7827

against)

CONSOLIDATED EDISON COMPANY OF NEW YORK,)

INC.)

and)

THOMAS J. GALVIN,)

Defendants - Appellees)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFF - APPELLANT

MARTIN A. SCHOTTENFELD

ISSUES PRESENTED FOR REVIEW

1. Are the Order and the Judgement of the District Court, granting defendants'-appellees' Cross-Motion for Summary Judgement, legally erroneous?
2. Are the Order and the Judgement of the District Court, denying plaintiff's-appellant's Motion for Partial Summary Judgement and dismissing the action, legally erroneous?

STATEMENT OF THE CASE

Plaintiff-appellant's action was brought under Section 1132 (a) (1) (B) of the Employee Retirement Income Security Act (E.R.I.S.A.) of 1974, with subsequent modifications, Title 29 U.S.C.A.
The plaintiff-appellant is a retired employee of the defendant-appellee Consolidated Edison Company of New York, Inc. The second defendant-appellee, Thomas J. Galvin, is the Plan Administrator of the Retirement Plan for Management Employees of the defendant Con Edison. Section 1132 (a) (1) (B) of E.R.I.S.A. provides, that pension benefits promised in a pension plan are enforceable. The 1975 Pension and Benefits Plan of the defendants-appellees provides a clear definition of the accredited service for the computation of a retirement pension,

promising that "Accredited service for the computation of a pension will be the total of the months and years of service the employee was continuously in the employ of the Company in other than a temporary status" (Exhibit A-11, page 14, lines 6-12). The definition of the Accredited Service, provided clearly in the 1975 Con Edison Pension and Benefits Plan (Exhibit A-11, page 14, lines 6-12) does not mention any restriction or limitation by age. The defendants argue, that amendments were made to the 1975 Con Edison Pension and Benefits Plan, including the 1983 Retirement Plan for Management Employees, limiting the accredited service to age 65, stating also that the 1975 Con Edison Pension and Benefits Plan, which provides a clear and binding definition of the "Accredited service for

the computation of a pension" would have become "obsolete" (Exhibit A-20, Affidavit of Sheldon E. Reichard, page 9, lines 31-32). The plaintiff-appellant has retired from the defendant Con Edison on 7/1/86, at age 67.

Plaintiff-appellant's argument, that the amendments to the 1975 Con Edison Pension and Benefits Plan, made unilaterally by the defendants, reducing the benefits, without the consent of the participants of the prior 1975 Pension and Benefits Plan, cannot be applied to the participants of the prior 1975 Pension and Benefits Plan (Exhibit A-22, page 6, lines 21-28), was entirely omitted to be considered by the District Court.

The District Court has embraced defendants'-appellees' argument, that the amendments to the 1975 Con Edison Pension

and Benefits Plan, made unilaterally by the defendants, would be applicable to the plaintiff-appellant who is a participant of the prior plan (Exhibit A-24, page 2, lines 12-21; page 3, lines 1-6).

The District Court has also omitted to consider plaintiff's-appellant's objections to some of defendants' exhibits, which are unknown to plaintiff-appellant and has not decided on this matter (Exhibit A-22, pages 1 and 2, the entire section (I) (A)).

The District Court has also omitted to consider and to decide on plaintiff's-appellant's argument of inadmissibility of defendants'-appellees' Cross-Motion for Summary Judgement under Rule 56 of the Federal Rules of Civil Procedure (Exhibit A-22, page 3 - the entire page).

Furthermore, the District Court has

omitted to consider and to decide on plaintiff's-appellant's request to be set aside and disregarded the Affidavit of Sheldon E. Reichard, dated February 12, 1988 (Exhibit A-20, all the 11 pages), due to the fact that this affidavit contains untrue allegations of "fact" and erroneous interpretations of law, specified in detail by the plaintiff-appellant (Exhibit A-22, the entire pages 4 and 5; Exhibit A-23, the entire affidavit on one page).

On top of all the omissions mentioned above, the District Court has totally overseen defendants'-appellees' failure to comply with the Order of the District Court, dated 1/13/88, entered on Docket on 1/26/88, by not replying to plaintiff's-appellant's opposition to defendants'-appellees' Cross-Motion on or

before 4/8/88 and by not requesting any extension of time for this purpose (Exhibit A-17, lines 10-11).

With the Memorandum Opinion and Order dated August 19, 1988 and the Judgement dated August 24, 1988, entered on Docket on 8/26/88, the District Court has granted defendants'-appellees' Cross-Motion for Summary Judgement, has denied plaintiff's-appellant's Motion for Partial Summary Judgement and has dismissed the action (Exhibit A-24; Exhibit A-25).

Plaintiff-appellant has filed the Notice of Appeal on 9/23/88 (Exhibit A-27).

STATEMENT OF FACTS

The appellant was continuously employed with the appellee Con Edison from June 1969, until July 1, 1986, when the appellant retired at the age of 67. The appellant was born on July 18, 1919 (Exhibit A-13, page 1, line 3; page 2, last line).

During the time of employment, the appellant became a participant of the 1975 Con Edison Pension and Benefits Plan and also a participant of the 1983 Con Edison Retirement Plan for Management Employees (Exhibit A-12, page 2, Interrogatory No. 2).

The appellee Thomas J. Galvin is the Plan Administrator of the Con Edison Retirement Plan for Management Employees and of the Con Edison Pension and Benefits Plan (Exhibit A-12, Interrogatories 7 and 8).

Appellant's salary history is shown on appellant's Personal Record sheet (Exhibit A-13, both pages).

The definition of the "Accredited service for the computation of a pension" is provided in the 1975 Con Edison Pension and Benefits Plan, on page 14, Section (B) (1) (Exhibit A-11, lines 4-12 on page 14). The accredited service promised by the appellees in this clear definition, will be the total of the months and years of service the employee was continuously in the employ of the Company in other than a temporary status. This clear definition of the accredited service for the computation of a pension does not mention any limitation by age.

The appellees have amended unilaterally the 1975 Con Edison Pension and Benefits Plan several times, including in 1983

with the issuance of the new Retirement Plan for Management Employees, effective January 1, 1983. In those amendments of the 1975 Con Edison Pension and Benefits Plan, made by the appellees unilaterally subsequent to 1975, the appellees have indeed reduced the benefits promised in the 1975 Pension and Benefits Plan and have limited the accredited service to age 65.

But even in the new 1983 Con Edison Retirement Plan for Management Employees, booklet of 40 pages, the appellees have promised on page 5, under the heading "Benefits for participants of the prior Plan", that the old formula of the 1975 prior pension plan, based on the "Total Salary Prior to retirement" will continue to be applied to the participants of the prior 1975 Pension and Benefits Plan

(Exhibit A-10, page 5, chapter under the heading "Benefits for Participants of the Prior Plan").

The booklet of 40 pages of the 1983 Con Edison Retirement Plan for Management Employees, is the only edition of the 1983 Con Edison Retirement Plan for Management Employees, distributed to the employees, including to the appellant. The book of 64 pages of the 1983 Con Edison Retirement Plan for Management Employees, edited by the appellees, was never distributed to the employees, as recognized by the appellees and is unknown to the appellant (Exhibit A-22, page 2, numbers 3 and 4).

The appellees have recognized that the "material factual issues", presented by appellant on appellant's "Statement of the material facts" under Rule 3 (g),

(Exhibit A-9), are not in dispute (Exhibit A-21, page 1, line 10). But the appellees have added, on appellees Rule 3 (g) Statement, under (8) and (9), allegations as "facts", which are untrue and are contradicted by the appellant (Exhibit A-19, page 2, numbers (8) and (9); Exhibit A-22, page 3, the entire page).

The District Court has omitted to consider and to decide on appellant's argument of inadmissibility of appellees' Cross-Motion for Summary Judgement under Rule 56 of the Federal Civil Procedure (Exhibit A-22, page 3, last 3 lines).

In the Memorandum Opinion and Order, dated August 19, 1988, the District Court has incorrectly stated that the "material facts are not in dispute" (Exhibit A-24, page 1, line 13). As shown above, some

allegations on appellees' Rule 3 (g) Statement are untrue and contradicted by appellant, but the District Court has omitted to consider and to decide on this matter (Exhibit A-22, page 3, the entire page).

REASONS FOR APPEAL

1. OMISSION TO BE CONSIDERED AND TO BE ACTED UPON APPELLEES' FAILURE TO COMPLY WITH THE DISTRICT COURT'S ORDER dated 1/13/88, entered on Docket on 1/26/88.

With the Order dated 1/13/88, entered on the Docket on 1/26/88, the District Court has ordered that defendants-appellees should reply to plaintiff-appellant's response to defendants'-appellees' Cross-Motion for Summary Judgement on or before April 8, 1988 (Exhibit A-17, lines 10-11).

Defendants-appellees have failed to comply with the District Court's Order dated 1/13/88 and have not requested any extension of time for this purpose. Defendants'-appellees' presentation of the reply to plaintiff-appellant's oppo-

sition to defendants'-appellees' Cross-Motion for Summary Judgement on the date scheduled for the Oral Argument (on June 10, 1988), made it impossible to the plaintiff-appellant to present the Oral Argument properly.

The District Court has totally overseen defendants'-appellees' failure to comply with the Order dated 1/13/88 (Exhibit A-17, lines 10-11) and has not considered and not acted upon this matter. Defendants'-appellees' Cross-Motion for Summary Judgement should have been dismissed for defendants'-appellees' failure to comply with the District Court's Order dated 1/13/88 (Exhibit A-17, lines 10-11).

2. <u>OMISSION TO BE CONSIDERED AND TO BE DECIDED UPON APPELLANT'S ARGUMENT OF INADMISSIBILITY OF</u>

APPELLEES' CROSS-MOTION FOR SUMMARY JUDGEMENT UNDER RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

The appellant has presented and proven in detail the argument that appellees' Cross-Motion for Summary Judgement is inadmissible under Rule 56 of the Federal Rules of Civil Procedure, because the appellees have inserted under (8) and (9) of appellees' Rule 3 (g) Statement untrue allegations as "facts", which were disputed and contradicted by the appellant (Exhibit A-22, page 3 - the entire page). Note 203 to Rule 56 of the Federal Rules of Civil Procedure, U.S.C. 28, cites numerous decisions of higher Federal Courts, stating that summary judgements are inadmissible when any material facts are in dispute.

The District Court has based the Memorandum Opinion and Order # 63038 (Exhibit A-24) on the untrue allegations presented as "facts" under (8) and (9) of defendants'-appellees' Rule 3 (g) Statement and has omitted to consider and to decide upon appellant's argument of inadmissibility of defendants'-appellees' Cross-Motion for Summary Judgement under Rule 56 of the Federal Rules of Civil Procedure, presented and proven in detail by appellant (Exhibit A-22, page 3 - the entire page).

3. <u>OMISSION TO BE CONSIDERED AND TO BE DECIDED UPON APPELLANT'S OBJECTIONS TO SOME OF APPELLEES' EXHIBITS, WHICH ARE UNKNOWN TO APPELLANT</u>.

The appellant has objected against a number of 5 Exhibits presented by the

apellees with appellees' Cross-Motion for Summary Judgement, which exhibits are unknown to appellant and has requested that those 5 Exhibits, unknown to appellant, be set aside and considered out of the record and out of the file (Exhibit A-22, page 1, lines 11-21; page 2, lines 1-18). The District Court has omitted to consider appellant's objections and appellant's request to be set aside and disregarded those documents, which are unknown to the appellant.

4. 0MISSION TO BE CONSIDERED AND TO BE DECIDED UPON APPELLANT'S REQUEST TO BE SET ASIDE AND DISREGARDED THE AFFIDAVIT OF SHELDON E. REICHARD, dated February 12, 1988 (Exhibit A-20), WHICH AFFIDAVIT CONTAINS UNTRUE ALLEGATIONS OF "FACT" AND

ERRONEOUS INTERPRETATIONS OF LAW.

The appellant has proven in detail that numerous allegations of "fact" made in the affidavit of Sheldon E. Reichard, dated February 12, 1988, are untrue and that interpretations of the law, made by Mr. Reichard in this affidavit, are erroneous and has requested that the affidavit of Sheldon E. Reichard, dated February 12, 1988, be set aside and disregarded (Exhibit A-22, page 4 - the entire page; page 5 - the entire page; Exhibit A-20 - all the 11 pages; Exhibit A-23 - the entire page).

The District Court has omitted to consider and to decide upon appellant's request to be set aside and disregarded the affidavit of Sheldon E. Reichard, dated February 12, 1988.

Moreover, the District Court has based the Memorandum Opinion and Order # 63038 (Exhibit A-24) on the disputed affidavit of Sheldon E. Reichard, dated February 12, 1988, citing untrue allegations contained in this affidavit (Exhibit A-24, page 3, lines 1-6, lines 15-19).

5. <u>OMISSION TO BE CONSIDERED AND TO BE DECIDED UPON APPELLANT'S ARGUMENT, THAT THE AMENDMENTS TO THE 1975 CON EDISON PENSION AND BENEFITS PLAN, WHICH WERE MADE UNILATERALLY BY THE APPELLEES, REDUCING THE BENEFITS, ARE NOT APPLICABLE TO THE APPELLANT, WHO IS A PARTICIPANT OF THE 1975 PRIOR PLAN</u>.

The appellees made unilaterally amendments to the 1975 Pension and Benefits Plan, reducing the benefits, among others

by limiting the accredited service to age 65. Those amendments were made by the appellees without the consent of the participants of the Prior 1975 Plan and therefore cannot be applied to the participants of the prior 1975 Pension and Benefits Plan. In fact, the appellees have recognized that those amendments, reducing the benefits, will not be applied to the participants of the prior 1975 Pension and Benefits Plan, by providing in the new 1983 Con Edison Retirement Plan for Management Employees, that the old formula of computation of the retirement benefits, based on the "TOTAL SALARY PRIOR TO RETIREMENT", will continue to be applied to the participants of the prior 1975 Pension and Benefits Plan (Exhibit A-10, page 5, "Benefits for Participants of the Prior Plan").

The District Court has not considered the argument presented by the appellant, that the amendments to the 1975 Con Edison Pension and Benefits Plan, made unilaterally by the appellees without the consent of the participants of the prior 1975 Pension and Benefits Plan, are not applicable to the participants of the prior 1975 Pension and Benefits Plan (Exhibit A-22, page 6, lines 15-28).

In addition to the omission to consider and to decide upon appellant's argument mentioned above, regarding the non-applicability of the amendments to the 1975 Con Edison Pension and Benefits Plan to participants of the prior 1975 Pension and Benefits Plan, the District Court has based the Memorandum Opinion and Order # 63038 on those amendments and has applied those amendments to the appellant

(Exhibit A-24, page 4, lines 4-13). Furthermore, the District Court has connected the clear provision of the 1983 Retirement Plan for Management Employees, page 5, booklet of 40 pages (Exhibit A-10), with the amendments to the 1975 Pension and Benefits Plan, contained in the 1983 Retirement Plan for Management Employees, this way annihilating the special provision of "Benefits for Participants of the Prior Plan" shown on page 5 of the booklet of 40 pages of the 1983 Con Edison Retirement Plan for Management Employees (Exhibit A-10, page 5; Exhibit A-24, page 4, lines 15-30).

6. THE DISTRICT COURT'S VIEW, THAT THE INFORMATION APPELLANT RECEIVED IN 1984, DURING A PRE-RETIREMENT INTERVIEW, THAT APPELLANT'S PENSION WILL REMAIN

UNCHANGED SHOULD APPELLANT CONTINUE TO WORK BEYOND AGE 65, CONSTITUTES A VALID AND APPLICABLE MODIFICATION OF THE 1975 PENSION AND BENEFITS PLAN, IS CLEARLY ERRONEOUS.

The District Court has viewed the pre-retirement interview appellant attended on 4/24/84 and the Memo prepared by appellees and signed by appellant with clear disagreement (Exhibit A-26) as a valid modification of the 1975 Con Edison Pension and Benefits Plan (Exhibit A-24, page 3, lines 18-26; page 4, lines 1-13). The District Court's view that the information appellant received during the pre-retirement interview on April 24, 1984, that appellant will not accrue pension credits should he continue to work beyond age 65 and the Memo containing this

information, signed by appellant with clear disagreement on 4/24/84, would be equivalent with a valid modification of the 1975 Con Edison Pension and Benefit Plan, particularly of the 1975 clear definition of the "Accredited Service for the computation of a Pension" (Exhibit A-11, page 14, lines 6-12) is clearly erroneous.

The promises made by the appellees in the 1975 Con Edison Pension and Benefits Plan, specifically the formula of computation of a pension (Exhibit A-11, page 14, lines 6-12), are binding and enforceable in conformity with Section 1132 (a) (1) (B) of E.R.I.S.A.

The promise made by appellees in the new 1983 Retirement Plan for Management Employees, booklet of 40 pages, that the old formula of computation of a pension

on the basis of the "Total Salary prior to Retirement" will continue to be applied to participants of the prior 1975 Pension and Benefits Plan, is underlying the continuous validity of the old formula for computation of a pension provided in the 1975 Con Edison Pension and Benefits Plan (Exhibit A-11, page 14, lines 6-12; Exhibit A-10, page 5, "Benefits for Participants of the Prior Plan"). The information given by appellees to the appellant on 4/24/84, that appellees intend to freeze the accredited service at age 65 and the Memo prepared by appellees and signed by appellant with clear disagreement on the same day of 4/24/84 (Exhibit A-26) cannot be interpreted as a valid modification of the clear definition of the "Accredited Service for the computation of a Pension"

contained in the 1975 Con Edison Pension and Benefits Plan (Exhibit A-11, page 14, lines 6-12).

The District Court's view, that the pre-retirement interview of 4/24/84 and the Memo signed by appellant on the same day, at the request of the interviewer, with clearly expressed disagreement, would constitute a valid and applicable modification of the 1975 Con Edison Pension and Benefits Plan, is clearly erroneous (Exhibit A-26; Exhibit A-11, page 14, lines 6-12; Exhibit A-24, page 3, lines 18-26; page 4, lines 1-13).

7. THE DISTRICT COURT'S OPINION THAT IT WOULD EXIST A NEXUS BETWEEN THE CLEAR DEFINITION OF "ACCREDITED SERVICE FOR THE COMPUTATION OF A PENSION", PROVIDED IN THE 1975 PENSION AND

BENEFITS PLAN, AND APPELLANT'S AGE, IS CLEARLY ERRONEOUS.

The 1975 Con Edison Pension and Benefits Plan provides a clear, detailed and complete definition of the "Accredited Service for the computation of a Pension" (Exhibit A-11, page 14, lines 6-12). The definition of the "Accredited Service for the computation of a Pension", provided in the 1975 Pension and Benefits Plan, does not make any condition by age. The only condition requested for accrediting the service of an employee towards the computation of a pension is, that the employee should have been "continuously in the employ of the company in other than a temporary status" (Exhibit A-11, page 14, lines 6-9).

The appellant was continuously in the employ of Con Edison from June 30, 1969

until appellant's retirement on July 1, 1986 (Exhibit A-24, page 1, lines 12-16). The nexus created by the District Court between the "Accredited Service for the computation of a Pension", as defined clearly and in detail in the 1975 Con Edison Pension and Benefits Plan (Exhibit A-11, page 14, lines 6-12) and appellant's age, is clearly erroneous and is not supported by the evidence on record. The clear definition of the "Accredited Service for the computation of a Pension", provided in detail in the 1975 Con Edison Pension and Benefits Plan, is complete and does not allow any additional condition to be connected.

The validity of the definition of the "Accredited Service for the computation of a Pension", as provided in the 1975 Con Edison Pension and Benefits Plan, was

also confirmed by the appellees in the new 1983 Retirement Plan for Management Employees, booklet of 40 pages, by providing on page 5, that the old formula of computation of a pension, retained from the prior (1975) plan, will continue to be applied to participants of the prior 1975 Pension and Benefits Plan, on the basis of the "Total Salary prior to retirement" (Exhibit A-10, page 5, "Benefits for Participants of the Prior Plan").

It appears to be undoubtful, that the nexus created by the District Court between the "Accredited Service for the computation of a Pension" as defined clearly and completely in the 1975 Con Edison Pension and Benefits Plan (Exhibit A-11, page 14, lines 6-12) and the age of the appellant, is clearly erroneous

(Exhibit A-24, page 2, lines 5-11; page 3, lines 1-12).

The statement contained in the District Court's Memorandum Opinion # 63038, "that at no time during plaintiff's employment did the plan provide that months or years worked after attaining age 65 would be credited for pension calculation purposes", is clearly erroneous (Exhibit A-24, page 3, lines 7-10; page 4, lines 29-30). The definition of "Accredited Service for computation of a Pension", provided clearly and completely in the 1975 Con Edison Pension and Benefits Plan, does not make any distinction between service performed at any age --before or after age 65 (Exhibit A-11, page 14, lines 6-12).

8. THE DISTRICT COURT'S OPINION THAT IT WOULD EXIST A NEXUS

BETWEEN THE SPECIAL PROVISION OF THE 1983 RETIREMENT PLAN FOR MANAGEMENT EMPLOYEES, ENTITLED "BENEFITS FOR PARTICIPANTS OF THE PRIOR PLAN", AND THE AMENDMENTS TO THE 1975 PENSION PLAN, CONTAINED IN THE 1983 PLAN, IS CLEARLY ERRONEOUS.

The 1983 Con Edison Retirement Plan for Management Employees, booklet of 40 pages, contains a special provision for participants of the Prior 1975 Pension and Benefits Plan, entitled "Benefits for Participants of the Prior Plan" (Exhibit A-10, page 5). In this special provision for participants of the Prior 1975 Pension and Benefits Plan, the old formula of computation of a pension, on the basis of the "Total Salary prior to Retirement", was reproduced from the 1975

Plan, in order to be applied only to participants of the Prior 1975 Pension and Benefits Plan. This special provision, contained on page 5 (booklet of 40 pages) of the 1983 Con Edison Retirement Plan for Management Employees (Exhibit A-10), exempts the participants of the prior 1975 Pension and Benefits Plan from being subjected to the amendments made unilaterally by the appellees to the 1975 Pension and Benefits Plan, which amendments are contained in the new 1983 Con Edison Retirement Plan for Management Employees.

The creation by the District Court of a nexus between the special provision of "Benefits for participants of the Prior Plan" (Exhibit A-10), page 5) and the amendments made unilaterally by the appellees to the prior 1975 Pension and

Benefits Plan, contained in the new 1983 Con Edison Retirement Plan for Management Employees, annihilates the meaning and the wording, as well as the scope of the special provision of "Benefits for Participants of the Prior Plan" shown on page 5, booklet of 40 pages, of the 1983 Con Edison Retirement Plan for Management Employees (Exhibit A-10, Exhibit A-24, page 4, lines 22-29).

The nexus created by the District Court between the special provision of "Benefits for Participants of the Prior Plan" (Exhibit A-10, page 5) and the amendments to the 1975 Pension and Benefits Plan, contained in the 1983 Retirement Plan for Management Employees, is clearly erroneous (Exhibit A-24, page 4, lines 22-29).

The statement made by the District

Court, that "no prior pension plan provided pension credit for service after age 65",is not supported by the evidence on record and is clearly erroneous (Exhibit A-24, page 3, lines 7-10; page 4, lines 29-30; Exhibit A-11, page 14, lines 6-12).

CONCLUSION AND PRAYER FOR RELIEF

In light of the foregoing, it appears that the Appeal is validly reasoned and justified.

The appellant respectfully prays for the following Relief:

- to be reversed the Order and the Judgement of the District Court;
- to be remanded the case to the District Court for new consideration and Judgement, consistent with the Opinion of the Court of Appeals;
- to be awarded the reimbursement of appellant's costs of Appeal, in the total estimated amount of $4,000.00, consisting of docketing fee, typing costs, copying and binding costs, as well as reasonable attorney's fee and consulta-

tion fees, in conformity with Section 1132 (g) (1) of E.R.I.S.A. (U.S.C. 29);

- any other Relief the Court of Appeals may consider just and proper.

Appellant, Pro Se

/s/Martin A. Schottenfeld
Martin A. Schottenfeld
802 West 190th Street, Apt. 3 D
New York, New York 10040
Tel. (212) 928-6785

Appellant's Exhibit No.

A-3

IN THE DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK

Case Title : MARTIN A. SCHOTTENFELD ,)

Judge : J.E.S. Plaintiff)

vs.)

CONSOLIDATED EDISON COMPANY)

OF NEW YORK, Inc.)

Case No. 87 CIV 2650 Defendant)

THOMAS J. GALVIN ,)

Defendant)

The undersigned MARTIN A. SCHOTTENFELD, 802 West 190-th Street, Apt. 3 D, New York, N.Y. 10040,

-Plaintiff-

submits herewith an

Amended

C o m p l a i n t

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, Inc., 4 Irving Place, New York, N.Y. 10003,

-Defendant-

and

THOMAS J. GALVIN, -Defendant-

c/o Con Edison
4 Irving Place,
Room 1605,
New York, N.Y. 10003

LEGAL BACKGROUND

This complaint is based on E.R.I.S.A. (Employees Retirement Income Security Act) of 1974, with subsequent modifications, as well as on Con Edison Retirement Plan in effect prior to December 31, 1982, combined with Con Edison Retirement Plan for Management Employees, effective January 1, 1983, page 5, Section III, "Benefits for Participants of the Prior

Plan".

THE FACTS PRESENTED

The plaintiff was employed with the defendant since June 1969 and has retired on July 1, 1986, at age 67, after 18 years of service.

In conformity with defendant's Retirement Plan in effect prior to 12/31/1982, as well as in conformity with the new Retirement Plan for Management Employees, effective 1/1/1983, Section III, page 5, "Benefits for Participants of the Prior Plan", plaintiff's retirement pension should have been calculated and paid based on the formula :

2.2% X Total Salary

"Total Salary" means the total salary earnings prior to retirement, as clearly defined in Con Edison's Retirement Plan for Management Employees, page 5, under

the heading "Benefits for Participants of the Prior Plan".

The defendants have violated and broken the above commitment provided in the Retirement Plan, by calculating only the portion of the Total Salary earned until age 65 and by disregarding the salary earnings above 65 and prior to retirement.

Furthermore, the Retirement Plan provides that the 14-th year prior to retirement should be considered as "pivot year" and the earnings in earlier years should be credited at the pivot year's earnings rate. The 14-th year prior to plaintiff's retirement was the year 1972/73. The defendants have violated and broken the above commitment too, by considering as pivot year the year 1970, in which the plaintiff had a lower salary.

The plaintiff has followed the administrative complaining procedure provided in defendant's Retirement Plan, but all the administrative complaints submitted by the plaintiff were denied, including by the Plan Administrator. The constant and repeated denials of plaintiff's pension benefits provided in defendant's Retirement Plan, have caused the plaintiff lots of pain and sufferings.

JURY DEMAND

The plaintiff respectfully asks to be conducted the trial before a JURY.

PRAYER FOR RELIEF

The plaintiff respectfully asks that the defendants should be obligated :

a) to calculate and pay plaintiff's retirement pension on the basis of the total salary earnings prior to

retirement and with the 1972/73 salary year as "pivot year", retroactively from July 1, 1986 ;

b) to pay a penalty of $ 100.00 daily, to compensate partly plaintiff's pain and sufferings, for each day the defendants delay the correct computation and payment of plaintiff's retirement pension ;

c) to pay the trial costs and reasonable attorney's fees.

Plaintiff,

/s/Martin A. Schottenfeld

Martin A. Schottenfeld

P137

Appellant's Exhibit No.

A-1

87-2650 Sprizzo, J.

PLAINTIFFS

SCHOTTENFELD, MARTIN A.

DEFENDANTS

CONSOLIDATED EDISON COMPANY

OF NEW YORK,INC

GALVIN, THOMAS J.

10/19/87: AMENDED COMPLAINT.

CAUSE

denial of retirement pension

ATTORNEYS

PRO-SE

MARTIN A,SCHOTTENFELD

802 WEST 190 ST Apt.3D

P138

NEW YORK CITY 10040

928 - 6785

Charles E. McTiernan Jr.

4 Irving Place, Room 1815S

New York, New York 10003

(212) 460-2432

DATE MAILED

APR 20 1987 NH117 8-24-88

CIVIL DOCKET: M.A. Schottenfeld -v- Consolidated Edison Co. Docket No. 87-2650

Date	Nr.	PROCEEDINGS
4-20-87	1	Fld Complaint issued summons and notice purs 28 USA 636(c). Jury trial demanded.
8/14/87	2	Filed summons, notice and acknow of receipt S/C, upon: Con Edison Co of NY, by Secy CE Co of NY date: July 30, 1987 JST Peter Irwin, mang agent
8-20-87	3	Fld. Defendants ANSWER to the Complaint. CET RF
8-20-87	4	Fld. Defendants Notice to take Deposition upon oral examination of Martin A. Schottenfeld on 10-8-87. RF

8/31/87	5	Filed pltff pro se Notice of Motion, for an order to add co-deft, JST
9 18 87	-	PRE-TRIAL CONFERENCE HELD BY
10/6/87	6	Filed Order, PTC, pltff pro se's motion to add a co-co-deft is granted, all parties appear before the Court at a pre-motion conf, Nov 20, 1987, 4:30 PM,Sprizzod,cmc
10/19/87	7	Filed pltf pro se AMENDED COMPLAINT. JST
10/27/87	8	Filed Amended Summons, S/C; upon: Consolidated Edison Co NY, by: Kathy Williams, mng agent date: Oct. 26, 1987; upon: Thomas J. Galvin, by: Kathy Williams,

		co-worker date: Oct 26, 1987
11/9/87	9	Filed ANSWER to Amended complt. (by Thomas J. Galvin. CEMc JST
11/9/87	10	Filed ANSWER to Amended Complt. (by Con Edison) CEMc JST
11/20/87	--	PTC held by JES.
12/2/87	11	Filed Order, PTC, pre motion conf for Jan 8, 1988, 4:30 PM, Sprizzo J. cm JST
12/22/87	12	Filed NOtice of Pltffs Motion for partial summary judgment. with pltffs affirmati in support. JST
1/4/88	13	Filed pltff memorandum to pltff motion for partial s/j. JST

1/11/88	--	PRE-MOTION CONF. HELD BY JES.
1/26/88	14	Filed order; PMC, ordered that deft. shall cross-move for summary jt. by 2/12/88; ordered that pltf. shall respond by 3/11/88; deft. shall reply to pltf's response 4/8/88; ordered that ORAL ARGUMENT be held 6/10/88, 10:30 A.M. Sprizzo,J. cmc JST
2/17/88	15	Filed defts Notice of Cross Motion for summary judgment, ret: JUne 10, 1988, with defts rule 3 (g), and Aff of Sheldon E. Reichard attached. JST
2/17/88	16	Filed defts memo of law in opposition to pltffs motion

for partial summary judgment and in support of defts cross motion for summary judgment. JST

2/24/88 17 Filed EXHIBITS in support of Defts Motion for summary judgment. JST

3/11/88 18 Filed pltff pro se Memorandum of Law. JST

3/14/88 19 Filed Affidavit of Martin A. Schottenfeld in support of pltffs memorandum of law. JST

8-22-88 20 Fld memo opinion and order #63038 for the reasons set forth pltffs motion for partial summary judgemnt is denied and defts cross-motion for summary judgment is granted. The clerk of

court is directed to enter judgment and close this action. SPRIZZO, J. cmc LA

8-21-88 21 Fld judgement ordered that this action is dismissed. RAYMOND F. BURGHARDT, clerk EOD 8-26-88 LA

8-26-88 --- Mailed out copy of judgment with appeal form to pltffs and defts attnys.....

9-23-88 22 Fld notice of appeal to the USCA 2nd Circuit from M&O #63038. cm LA

9-30-88 --- Forewarded copy of notice of appeal to Dist. Judge and copy of notice of appeal with docket entries to Court of Appeals...LA

10-7-88 23 Fld notice that original record has been transmitted

		to the USCA 2nd Circuit on 10-7-88 LA
1-30-89	24	Fld notice that 1st supplemental record has been transmitted to the USCA 2nd Circuit on 1-30-89. LA
4-4-89	25	Fld true copy of order from the USCA, ordered that said judgment from the said Dist Court is affirmed...ELAINE B. GOLDSMITH, CLERK EOD 4-6-89 cm LA

89-223

Supreme Court, U.S.
FILED
SEP 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1989

MARTIN A. SCHOTTENFELD,

Petitioner,

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and THOMAS J. GALVIN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Appendix of Respondents Consolidated Edison Company of New York, Inc. and Thomas J. Galvin

EDWIN W. SCOTT
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4 Irving Place
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MARY SCHUETTE
JONATHAN A. FIELDS
Of Counsel

Dated: September 5, 1989

THE REPORTER COMPANY, INC., 30 Vesey St., New York, NY 10007—1989
NYC 212-732-6978 Westchester 914-681-1322 Long Island 516-222-0221
(7877)

Index to Respondents' Appendix.

Page

Docket Entry No. 17—Exhibits in Support of Defendants' Motion for Summary Judgment, dated February 12, 1988..... RA1

Exhibit A—Excerpts from The Consolidated Edison Pension and Benefits Plan, adopted effective August 1, 1975..... RA2

Exhibit C—The Consolidated Edison Pension and Benefits Plan, effective August 1, 1975, as amended effective September 23, 1980..... RA8

Exhibit D—The Consolidated Edison Retirement Plan for Management Employees, effective January 1, 1983..... RA50

Exhibit E—Con Edison Memorandum from Harry Terhune to Employees Attaining Age 65, Subject: Pension Credit for Service After Attaining Age 65, dated January 1984 and signed by plaintiff on April 24, 1986..... RA101

Exhibit F—The Consolidated Edison Retirement Plan for Management Employees, effective January 1, 1983, as amended through Amendment No. 5, dated April 9, 1986..... RA103

Exhibit I—Summary Plan Description booklet for The Consolidated Edison Retirement Plan for Management Employees, dated effective January 1, 1983..... RA180

Docket Entry No. 17—Exhibits in Support of Defendants' Motion for Summary Judgment, Dated February 12, 1988.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MARTIN A. SCHOTTENFELD,

Plaintiff,

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and THOMAS J. GALVIN,

Defendants.

87 Civ. 2650 (JES)

EXHIBITS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Dated: New York, New York
February 12, 1988

Respectfully submitted,

CHARLES E. MCTIERNAN, JR.
Attorney for Defendants
4 Irving Place, Rm 1815S
New York, New York 10003
(212) 460-2432

Of Counsel: Jonathan A. Fields

Exhibit A—Excerpts from the Consolidated Edison Pension and Benefits Plan, adopted effective August 1, 1975

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

BOARD OF TRUSTEES

JUNE 24, 1975

RESOLVED, That the Consolidated Edison Pension and Benefits Plan, in the form presented to this meeting and which modifies and amends the Company's Pension Plan for Retirement for Age and the Employees Security Plan, both as amended, be and it hereby is adopted, effective August 1, 1975, with such changes therein as the proper officers of the Company may deem necessary or advisable, or convenient and proper to carry out the intent of this resolution; and it was further

RESOLVED, That in the case of an employee who, after August 1, 1975, is separated from the Company service for disability, mandatory retirement age, or the discretion of the Company to employees who are not eligible for lifetime payments at the time of separation, a lump-sum payment from the treasury of the Company is hereby directed to be made in accordance with the conditions as set forth in the memorandum dated June 11, 1975 entitled "Consolidated Edison Pension and Benefits Plan" and the following Schedule of Allowances.

Schedule of Allowances

For accredited service (as described in the Plan) of from one (1) to five (5) years, the allowance will be sixty percent (60%) of a month's final basic straight-time rate of pay for each year of service.

For accredited service of six (6) or more years, the allowance will be the percentage of "Total Salary", as defined in the Plan, corresponding to the age on the date of separation of the employee from the active payroll, in accordance with the following:

Table of Allowances

Termination Age	*Percent of Total Salary*
65 to 60	12%
59 to 55	11%
54 to 50	10%
49 to 45	9%
44 to 40	8%
39 to 35	7%
34 to 30	6%
29 to 25	5%
24 to 20	4%

The Consolidated Edison Pension and Benefits Plan

* * *

thereunder for pensions, joint and survivor benefits, annuities, widows' benefits, and surviving spouse benefits are continued for the purpose of authorizing such payments and establishing eligibility for such benefits as may be payable under such plans unless superseded by the provisions of the Plan.

2. *Definitions and Guides to Construction*

A. *Definitions.*

Annuity—A payment made monthly for life of recipient.

Beneficiary—A lawful spouse of a participant and who is, or may become, eligible for benefits under the Plan or the plans.

Employee—An emplcyee is any person employed by the Company except those employed on a temporary basis.

Participant—An employee hired on his sixtieth (60th) birthday or earlier, or a former employee with a vested right, who is eligible for benefits under the Plan or the plans, or who may become eligible for benefits under the Plan.

Pension—A payment made monthly for life to an eligible participant.

Plan Year—A calendar year.

Total Salary—The aggregate of the annual basic straight-time compensation, to the nearest whole dollar, of an employee for his years of accredited service (not to exceed the last thirty [30] years of employment).

Vesting Service—The service within each plan year in the employment of the Company, credited to an employee towards meeting the requirement of the vesting schedule.

Accredited Service—The period of employment with the Company credited to an employee under the Plan or the plans and used in the computation of a pension.

4. *Eligibility for a Retirement Pension*

A. *Normal-Mandatory Retirement.*

Each employee, irrespective of length of service and whether or not a participant, who shall have attained age

sixty-five (65) (hereinafter referred to as "normal-mandatory retirement age") shall be retired from the service of the Company.

Upon such retirement, an employee

(1) who shall have completed such years of accredited service which when added to his years of age shall total not less than seventy-five (75), or

(2) who commenced employment with the Company on or after his fifty-fifth (55th) birthday but not later than his sixtieth (60th) birthday and who remained in the continuous employ of the Company until attaining normal-mandatory retirement age sixty-five (65),

will be entitled to a pension.

B. *Optional Retirement.*

Any employee who shall have attained the age of sixty-two (62) years and who shall have completed such years of accredited service which when added to his years of age total

* * *

(3) Absence under leave granted for any other reason, for time not exceeding a total of six (6) months.

8. *Effective Date of Retirement and Benefits*

The effective date of retirement and benefits shall be:

A. *For Retirements at Normal-Mandatory Retirement Age.*

For retirements at normal-mandatory retirement age, the first day of the calendar month next following the month of an employee's sixty-fifth (65th) birthday.

B. *For Optional Retirements and Early Optional Retirements.*

For optional retirements and early optional retirements, the first day of the calendar month next following the date upon which an employee files a written application to retire, or to receive a deferred pension.

C. *For Disability Retirements and Retirements in the Discretion of the Company.*

For disability retirements and retirements in the discretion of the Company, the first day of the calendar month following the effective date of the separation by the Company of the employee from the active payroll.

9. *Computation of Benefits*

A. *Computation of Annual Pension.*

All payments made under the Plan will be made on the basis of the following calculation made as though the employee at retirement was then sixty-five (65) years of age:

(1) The "Total Salary" for the employee multiplied by 2.2%.

(2) The amount in (1) increased by .125% for each calendar month of accredited service in excess of thirty (30) years.

The "Total Salary" used as a basis for the computation of benefits under the Plan shall be the aggregate of the annual basis straight-time compensation, to the nearest whole dollar, of an employee for his years of accredited service not in excess of the last thirty (30) years.

Annual basic straight-time compensation shall be an employee's regular stated rate of pay in his last pay period in each calendar year, on which overtime and other premium payments are based, but shall not include premium, overtime payments or similar payments. In the case of an hourly paid employee the annual basic straight-time compensation will be determined by multiplying the hourly rate by the employee's regular weekly schedule of hours multiplied by fifty-two (52).

The annual basic straight-time compensation for any period of accredited service shall be considered to be not less than such compensation as was applicable to the employee for the fifteenth (15th) accredited calendar year prior to the calendar year of his retirement, but in no event for any year later than 1962 and in no event less than three thousand dollars ($3,000); and for an employee whose annual basic straight-time compensation at the time of retirement is at a rate of three thousand dollars ($3,000) or less, the annual basic straight-time compensation for any period of accredited service shall be considered to be not less than an annual amount determined at the rate of his basic straight-time compensation at the time of retirement.

B. *Computation of Pensions, Annuities, or Benefits Based Upon Annual Pension.*

The following pensions, annuities or benefits, as specified, will be based upon the annual pension determined

* * *

Exhibit C—The Consolidated Edison Pension and Benefits Plan, effective August 1, 1975, as amended effective September 23, 1980

Restated Plan

The Consolidated Edison
Pension and Benefits Plan

Effective August 1, 1975
As Amended effective September 23, 1980

The Consolidated Edison
Pension and Benefits Plan

Table of Contents

Page No.

1. Introduction 1

2. Definitions and guides to Construction 2

A. Definitions 2
B. Guides to Construction 8

3. Participation 9

A. Application of the Plan 9
B. Maximum Age for Participation 9

4. Mandatory Retirement 9

5. Eligibility for a Retirement Pension 9

A. Retirement Age 62 or Later 9
B. Early Optional Retirement 10

C. Retirement or Termination for Disability ... 10
D. Termination of Service in the Discretion of the Company and Voluntary Termination 11
E. Participants Who Commence Employment Between Ages 55 and 60. 11
F. Cash-Out of Deferred Pension 11
G. Repayment of Cash-Out 12
H. Age and Service Required for a Pension ... 13
I. Entitlement to Retirement Benefits 13

6. Eligibility for Annuities and Benefits for a Surviving Spouse 13

A. Qualified Joint and Survivor Annuity 13
B. Surviving Spouse Benefit 16

7. Vesting 16

A. Vested Rights 16
B. Accrued Pension 17
C. Conditions under which Vested Benefits will not be paid 17

8. Service Credit 17

A. Determination of Service for Vesting 17
B. Determination of Accredited Service for Computation of a Pension 19
C. Other Service Recognized for Vesting or Computation of a Pension 21

9. Effective Date of Retirement and Benefits 22

10. Computation of Benefits 22

A. Computation of Annual Pension 22
B. Computation of Pensions, Annuities, or Benefits Based upon Annual Pension 25

(1) Normal-Mandatory Retirement, Optional Retirement, Disability Retirement for Age Sixty-Two (62) or Later and Retirement in the Discretion of the Company for Age Sixty-Two (62) or Later 26

(2) Early Optional Retirement and Retirement in the Discretion of the Company 26

(3) Disability Annuity Prior to Attaining Age Sixty-Two (62) 27

(4) Qualified Joint and Survivor Annuity 27

(5) Surviving Spouse Benefit 28

(6) Deferred Pension 29

(7) Deferred Pension at Age Sixty-Five (65) 29

(8) Deferred Pension Prior to Age Sixty-Five (65) 30

(9) Qualified Joint and Survivor Annuity 30

(10) Determination of Present Value of Vested Pension Payable at Age Sixty-Five (65)—Cash-Out 31

11. Limitation of Benefits and Deductions from Benefits 31

A. Maximum Benefits 31
B. Minimum Benefits 34
C. Deductions for Pension or Benefits Under Other Pension Plans 36
D. Limitation of Deductions 36

12. Social Security Offset 36

13. Payment of Benefits 37

A. Manner of Payment of Benefits 37
B. Termination of Payments 38

14. Assignment or Nonalienation of Benefits 38

15. No Right to Employment 39

16. Trust Fund 40

17. Contributions 40

A. Payment of Contributions 40
B. Funding Policy Procedure and Amount of Contributions 40
C. Payment of Expenses 41
D. Restrictions on recovery by Company of Contributions 42
E. Plan Is Non-Contributory 42

18. Fiduciaries 43

A. Named Fiduciaries 42
B. Fiduciary Responsibilites 45

C. General Provisions Concerning Fiduciaries 46

19. Powers and Duties of Administrator 47

A. Rules and Decisions 47
B. Records and Reports 48
C. Other Administrator Power and Duties 48

20. Administration 50

A. Restriction of Powers 50
B. Ascertainment of Benefits 50
C. Claims 51
D. Records 52

21. Termination or Modification of the Plan 52

A. Right to Terminate or Modify 52
B. Rights Upon Termination 53

22. *Miscellaneous* 55

A. Merger or Consolidation 55
B. Limitations if Plan Terminated within Ten (10) Years 55
C. Forfeitures 57

23. *Actuarial Tables*

(1) *The Consolidated Edison Pension and Benefits Plan*

1. *Introduction*

The Employee Retirement Income Security Act of 1974 ("ERISA") requires certain changes in the Pension Plan for Retirement for Age, as amended through April 1, 1973, and

the Employees Security Plan, as amended through April 1, 1973 ("the plans").

Accordingly, The Consolidated Edison Pension and Benefits Plan ("the Plan"), which modifies and amends the Pension Plan for Retirement for Age and the Employees Security Plan, both as amended through April 1, 1973, has been adopted, effective August 1, 1975, by Consolidated Edison Company of New York, Inc. ("the Company").

The Plan establishes the bases upon which, on and after August 1, 1975, employees of the Company and their eligible surviving spouses will be provided certain benefits.

The provisions of the Pension Plan for Retirement for Age and the Employees Security Plan, both as amended though April 1, 1973, as they relate to payments and eligibility thereunder for pensions, joint and survivor benefits, annuities, widows' benefits, and surviving spouse benefits are continued for the purpose of authorizing such (2) payments and establishing eligibility for such benefits as may be payable under such plans unless superseded by the provisions of the Plan.

2. *Definitions and Guides to Construction*

A. *Definitions.*

Annuity—A payment made monthly for life of recipient.

Beneficiary—A lawful spouse of a participant and who is, or may become, eligible for benefits under the Plan or the plans.

Employee—An employee is any person employed by the Company.

Participant—An employee hired on his sixtieth (60th) birthday or earlier, or a former employee with a vested right, who is eligible for benefits under the Plan or the

plans, or who may become eligible for benefits under the Plan.

(3) Pension—A payment made monthly for life to an eligible participant.

Plan Year— A twelve month period beginning January 1, 1976 and on each January 1st thereafter.

Total Salary—The aggregate of the annual basic straight-time compensation, to the nearest whole dollar, of an employee for his years of accredited service, not to exceed the last thirty (30) years of employment, prior to Normal Retirement Date.

Vesting Service—Year of Vesting Service—A plan year during which an employee has completed at least 1000 hours of service prior to Normal Retirement Date, or as provided in section 8 A (1) (b).

(4) Accredited Service—(a) The period of employment for service prior to January 1, 1976 and (b) the aggregate period of employment prior to Normal Retirement Date, within the benefit accrual computation periods, for service after December 31, 1975.

Layoff (or laid off)—As used in the Plan or the plans, shall mean the separation of an employee from the active payroll for lack of work or such other reason, in no way the fault of the employee, as may be determined by the Company.

Vesting Computation Period—The plan year beginning January 1, 1976 and on each January 1st thereafter.

Benefit Accrual Computation Period—The plan year beginning January 1, 1976 and on each January 1st thereafter.

(5) Cash-Out—The distribution, prior to Normal Retirement Date at the election of the participant of the actuarial value of one hundred percent (100%) of his non-forfeitable accrued pension benefits under the Plan.

One Year Break in Service—Any vesting computation period in which a participant has not completed more than 500 hours of service.

Hour of Service—Each employee will be credited with an hour of service for:

(1) (a) Each hour for which an employee is directly or indirectly paid or entitled to payment by the employer for the performance of duties and as provided for in section 8C. These hours shall be credited to the employee for the computation period or periods in which the duties are performed; and

(1) (b) Each hour for which an employee is directly or indirectly paid or entitled to payment by the employer for reasons (such as vacation, sickness or disability) other than for the performance of duties. These hours shall be credited to the employee for the computation period or periods in which payment is made or amounts payable to the employee become due; and

(1) (c) Each hour for which back pay, irrespective of mitigation of damage, has been either awarded or agreed to by the employer. These hours shall be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computa-

tion period in which the award, agreement or payment was made; and

(2) the following equivalencies shall be used for the purpose of crediting hours of service for those participants for whom hours of services are not maintained:

i. one day of employment equals ten (10) hours of service.

ii. one week of employment equals forty five (45) hours of service

iii. one month of employment equals one hundred and ninety (190) hours of service.

For purposes of crediting hours for non-performance of duties, such hours shall be credited in accordance with Department of Labor Regulation 2530. 200 b-2 (c).

(8) Normal Retirement Date—The Normal Retirement Date is the first day of the month following the participant's attainment of age 65.

Mandatory Retirement Date—The Mandatory Retirement Date is the first day of the month following the attainment of age 70 by an employee or a participant; or, if an employee is exempt from the provisions of the Age Discrimination in Employment Act of 1967, as heretofore and hereafter amended (because he or she is employed in a bona fide executive or a high policymaking position and otherwise satisfies the conditions permitting exemption), the first day of the month following his or her mandatory retirement.

B. *Guides to Construction.*

(1) The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender.

(9) 3. *Participation*

A. *Application of the Plan.*

The Plan, effective August 1, 1975, shall apply to all employees and surviving spouses who on and after that date shall become eligible and qualify for benefits thereunder.

B. *Maximum Age for Participation.*

No employee who begins employment with the Company later than his sixtieth (60th) birthday shall be a participant in the Plan.

4. *Mandatory Retirement*

Each employee or participant who shall have attained age seventy (70) shall be retired from the service of the Company; provided, however, that any employee who is exempt from the provisions of The Age Discrimination in Employment Act of 1967, as heretofore and hereafter amended (because he or she is employed in a bona fide executive or a high policymaking position and otherwise satisfies the conditions permitting exemption), may be mandatorily retired from the service of the Company after attaining age 65.

5. Eligibility for a Retirement Pension

A. *Retirement at Age 62 or Later*

A participant who shall have completed such years of accredited service which when added to his years of age (10) total not less than seventy-five (75), and who shall have attained the age of 62 years, shall, upon filing a

written application, be retired hereunder from the service of the Company and be entitled to a pension computed in accordance with paragraph 10 B (1). Such election shall not be revocable on or after the effective date of retirement.

B. *Early Optional Retirement*

A participant who shall have attained an age which when added to his years of accredited service shall total not less than seventy-five (75) shall, upon filing a written application, be retired from the service of the Company and be entitled to a pension computed in accordance with paragraph 10 B (2). Such election shall not be revocable on or after the effective date of retirement.

C. *Retirement or Termination for Disability*

A participant, prior to having attained age seventy (70), who shall have become disabled, may, if the Company shall so determine, be retired or terminated from the service of the Company. Upon retirement or termination, the employee may be eligible for a disability annuity, or a deferred pension (or a cash-out of his deferred pension), depending upon his age and years of accredited service, as hereinafter provided.

(11) D. *Termination of Service in the Discretion of the Company and Voluntary Termination.*

A participant who acquires a vested right to his accrued pension prior to having attained age sixty-five (65), and who terminates voluntarily or whose service is terminated by the Company for a reason other than disability, will be eligible for a pension if his age plus years of accredited service shall total not less than seventy-five (75), or a deferred pension (or a cash-out of his deferred pension) if his age plus years of accredited service shall total less than seventy-five (75).

E. *Participants who Commence Employment Between Ages 55 and 60*

A participant who commenced employment with the Company on or after his fifty-fifth (55th) birthday but not later than his sixtieth (60th) birthday and who remained in the continuous employ of the Company and attained age sixty-five (65) will be entitled to a pension upon his retirement from the service of the Company.

F. *Cash-Out of Deferred Pension.*

A participant whose age plus years of accredited service equal less than seventy-five (75) and who on termination of service with the Company has vested rights, may, in lieu of a deferred pension, cash-out the value of his pension payable at the attainment of age sixty-five (65).

(12) The employee will be allowed a reasonable period after termination in which to advise the administrator whether he chooses either to cash-out or to take a deferred pension. However, this period will not extend beyond the first day of the second month following the employee's date of termination.

G. *Repayment of Cash-Out.*

A participant who has cashed-out his vested rights and is subsequently reemployed may regain his vested rights for the period of service on which the cash-out was based by paying to.the trust the full amount of such cash-out with interest at five and one-half (5-1/2%) per annum, or such other rate of interest as may be used for actuarial valuation of the Plan at the time of the cash-out, compounded annually from the date of cash-out to the date of repayment.

Vested right for any of such prior service will be suspended until the cash-out is fully repaid. However, any of the years of accredited service following reemployment will be vested.

(13) H. *Age and Service Required for a Pension.*

Except for a participant who commenced employment with the Company on or after his fifty-fifth (55th) birthday but not later than his sixtieth (60th) birthday and who remained in the continuous employ of the Company and attained age sixty-five (65), as provided in paragraph 5 E, no participant whose age plus years of accredited service equals less than seventy-five (75) shall be entitled to a pension under the Plan.

I. *Entitlement to Retirement Benefits*

Participants eligible for a pension upon attaining age sixty-five (65), regardless of years of vesting service, shall be one-hundred percent (100%) vested in their accrued benefits. A participant shall become one-hundred percent (100%) vested in his accrued benefit upon attaining age sixty-five (65).

6. *ELIGIBILITY FOR ANNUITIES AND BENEFITS FOR A SURVIVING SPOUSE*

A. *Qualified Joint & Survivor Annuity*

1) Eligible participants retiring directly from employment and eligible participants who die while in service

(i) The lawful spouse of an employee on the active payroll or on an authorized leave of absence for any reason, shall be eligible (14) for a qualified joint and survivor annuity for life, provided that at the time of his death the employee shall have attained an age which, together with his then years of accredited service, shall total seventy five (75) or more.

(ii) An employee who, at the time of his retirement under the Plan, shall have attained an age which, together with his then years of accredited service shall total seventy-five (75) or more, or an employee entitled to a pension under paragraph 5 A (2), shall have the amount of his pension reduced

as computed in paragraph 10 B (4) to provide, upon his death, an annuity for life to his lawful spouse at the time of retirement (or on the date the pension begins, if a deferred pension is elected). By notification in writing, on retirement, or in the case of a deferred pension, prior to any payment of the deferred pension, the employee may decline to have his pension reduced to provide this annuity.

(iii) Any participant who, after becoming eligible for optional early retirement, terminates employment and thereafter dies before benefit (15) payments begin, will be assumed to have elected the optional early joint and survivor annuity effective on the date of death; provided, however, that if such participant had declined in writing to provide the joint and survivor annuity, then none shall be provided.

2) Vested participants whose benefits do not commence immediately following termination

An employee:

(1) who terminates or is terminated with a vested right; and

(2) whose age, together with his then years of accredited service, total less than seventy-five (75) at termination; and

(3) who shall have elected at termination to take a deferred pension;

shall have the amount of his pension reduced in order to provide an annuity to his surviving spouse as computed under paragraph 10 B (9). Such annuity shall amount to fifty percent (50%) of the reduced pension and shall be payable upon the death of the former (16) employee, but only to a surviving spouse who was married to the former employee when his pension commenced.

Prior to any payment of his pension the employee may decline in writing to accept a reduced pension to provide this annuity.

B. *Surviving Spouse Benefit.*

In the event that an employee or a participant described in paragraphs 6 A (1) (ii) or (iii) has declined a qualified joint and survivor annuity, there shall be provided to his lawful spouse, who was married to the employee at the time of retirement and at the time of death, a surviving spouse benefit for life or until the employee's spouse shall remarry in which case the spouse of the employee shall notify the Company of any remarriage. This benefit shall be suspended and shall not accrue while the employee's spouse is an active employee of the Company.

7. *Vesting*

A. *Vested Rights.*

A participant who completes ten (10) or more years of vesting service will be entitled to a non-forfeitable right of one hundred percent (100%) of his accrued pension payable at Normal Retirement Date.

(17) B. *Accrued Pension.*

The accrued pension is a pension which is or would be payable at age sixty-five (65), based on the employee's total salary and years of accredited service as of the date the computation is made.

C. *Conditions under which vested benefits will not be paid.*

In no event will a participant receive a deferred monthly pension if:

(a) He dies before retirement and his spouse is not entitled to benefits under section 6 or

(b) He has received a cash-out from the Plan.

If a participant entitled to a deferred pension, or a beneficiary, fails to make application for a deferred pension or a related benefit on or before the date when either the participant or beneficiary would otherwise be entitled to the benefit, no payment will commence before application is made.

8. *Service Credit*

A. *Determination of Service for Vesting*

Service for Vesting shall be determined as follows:

(18) 1. (a) *Prior to January 1, 1976:*

Within each calendar year the number of months that the employee is employed by the Company in other than a temporary status will be added and if the total number of months is six (6) or more, the employee will be credited with one (1) year of service for vesting. A fraction of a month will be counted as one (1) month.

(b) *After December 31, 1975:*

In accordance with the definition of Vesting Service, Section 2A of the Plan, or if more favorable to the participant, one year of vesting service if the participant is employed in continuous employment during any calendar year prior to attaining Normal Retirement Date for six months during the year.

2. An employee with less than ten (10) years of vesting service whose consecutive one-year breaks in service are either equal to or greater than his years of vesting service

will lose such prior vesting service unless the break in service was caused by layoff or disability.

(19) B. *Determination of Accredited Service for Computation of a Pension.*

For service prior to January 1, 1976

1.(a) Accredited service for the computation of a pension will be the total of the months and years of service the employee was continuously in the employ of the Company in other than a temporary status. For the purpose of determining service credit, a fraction of a month will be credited as one (1) month. Each period of accredited service will be added and the total of such service will be used in computing the pension.

For Service after December 31, 1975

1.(b) In accordance with the definition of Accredited Service, Section 2A of the Plan.

2. Employees who have acquired ten (10) years of accredited service shall be credited with all additional years and months of service with the Company prior to Normal Retirement Date regardless of a subsequent break in service. However, no period constituting a break in service will be included in the period of accredited service for computation of a pension.

(20) 3. If an allowance has been paid based upon accredited service performed prior to August 1, 1975 and such period of accredited service is included in the computation of a pension under the Plan, the actuarial present value of the pension so computed will be reduced by the total of such allowance payments. The resulting present value, as so reduced, of the pension will be the basis for determining the monthly pension.

4. The application of the foregoing provisions solely as they pertain to accredited service prior to the effective date of the Plan shall not be interpreted so as to reduce the years and months of accredited service which would have been used in the computation of the employee's pension under the provisions of the plans.

5. The effect of a cash-out of vested rights on accredited service will be to deny such credit for prior service until the cash-out is fully repaid, as provided in paragraph 5 G.

(21) 6. A participant receiving a pension or annuity under the Plan or the plans will, if reemployed after August 1, 1975, continue to receive such pension or annuity payments during the period of employment. Upon subsequent retirement, there will be payable to such participant an addition to his pension or annuity based on the service accredited from the date of reemployment. Pension or annuity payments suspended under the provisions of the plans applicable to employees who were reemployed prior to August 1, 1975 shall continue to be suspended and shall otherwise be subject to the provisions of the plans.

7. Service after Normal Retirement Date shall not be Accredited Service.

C. *Other Service Recognized for Vesting or Computation of a Pension.*

Accredited service and vesting service shall include periods of interruptions in service due to:

(1) To the extent required by law, active military, naval, marine or related service of the United States or the State of New York, or leaves of absence granted pursuant to Company policy for World War II defense employment (1941-1946);

(22) (2) Absence because of illness under sick leave granted; or

(3) Absence under leave granted for any other reason, for time not exceeding a total of six (6) months.

9. *Effective Date of Retirement and Benefits*

The effective date of retirement and benefits shall be the first day of the calendar month next following:

(A) the date upon which an employee files a written application to retire or to receive a deferred pension:

(B) the effective date of the separation by the Company of the employee from the active payroll, in the case of disability retirements and retirements in the discretion of the Company;

(C) the month in which a participant attains age seventy (70).

10. *Computation of Benefits*

A. *Computation of Annual Pension.*

All payments made under the Plan will be made on the basis of the following calculation made as though the employee at retirement was then sixty-five (65) years of age:

(23) (1) The "Total Salary" for the employee multiplied by 2.2%.

(2) The amount in (1) increased by .125% for each calendar month of accredited service in excess of thirty (30) years.

The "Total Salary" used as a basis for the computation of benefits under the Plan shall be the aggregate of the annual basic straight-time compensation, to the nearest whole dollar, of an employee for his years of accredited service not in excess of the last thirty (30) years.

Annual basic straight-time compensation shall be an employee's regular stated rate of pay in his last pay period in each calendar year, on which overtime and other premium payments are based, but shall not include premium, overtime payments or similar payments. In the case of an hourly paid employee the annual basic straight-time compensation will be determined by multiplying the hourly rate by the employee's regular weekly schedule of hours multiplied by fifty-two (52).

(24) The annual basic straight-time-compensation for any period of accredited service shall be considered to be not less than such compensation as was applicable to the employee for the fourteenth (14th) accredited calendar year prior to the calendar year of his retirement, but in no event for any year later than 1969 and in no event less than three thousand dollars ($3,000); and for an employee whose annual basic straight-time compensation at the time of retirement is at a rate of three thousand dollars ($3,000) or less, the annual basic straight-time compensation for any period of accredited service shall be considered to be not less than an annual amount determined at the rate of his basic straight-time compensation at the time of retirement.

A(1) All those employees retiring during the period July 1, 1980 through June 30, 1983 having then attained age 62 or older, if eligible to receive a benefit determined under paragraph A above, in addition to that benefit, shall receive a benefit in accordance with the following:

1. Only Plan participants who retire directly from the service of the Company during the period July 1, 1980 to June 30, 1983, will be eligible for this benefit.

(25) 2. A participant who retires at age 64 or older, will receive $41.67 per month from the date of retirement until June 30, 1983.

3. A participant who retires at age 62 or 63 will receive $33.34 per month until age 64 or June 30, 1983, if earlier, and thereafter will receive $41.67 per month until June 30, 1983.

4. A surviving spouse of a participant eligible for the additional benefit provided under this paragraph A(1) will receive, until June 30, 1983, one-half of the additional benefit that the participant would have received had he survived.

B. *Computation of Pensions, Annuities, or Benefits Based Upon Annual Pension.*

The following pensions, annuities or benefits, as specified, will be based upon the annual pension determined in accordance with paragraph 10 A.

The following computations apply only to an employee who terminates with vested rights but whose age when added to his accredited years of service at termination *is equal to seventy-five (75) or more.*

(26) (1) *Normal-Mandatory Retirement, Optional Retirement, Disability Retirement for Age Sixty-Two (62) or Later, and Retirement in the Discretion of the Company for Age Sixty-Two (62) or Later.*

The pension payable to an employee retiring at age 62 or later will be the amount determined in accordance with paragraph 10 A reduced, however, if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B. (4).

(2) *Early Optional Retirement and Retirement in the Discretion of the Company.*

This category applies to an employee who has retired prior to attaining age sixty-two (62). The pension payable to the employee will be the amount determined in accordance with paragraph 10 A multiplied by the appropriate discount factor in Table A corresponding to the number of months between the employee's projected date of retirement immediately after the employee's sixty-second (62nd) birthday and his early optional (or (27) discretionary) retirement date. The pension payable to the employee will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B (4).

(3) *Disability Annuity Prior to Attaining Age Sixty-Two (62).*

The annuity payable to an employee in this category will be equal to his early optional retirement pension plus an amount which when added to his early optional retirement pension will yield an annuity in an amount calculated by reducing the pension determined in accordance with paragraph 10 A by .125% for each calendar month (1 1/2% per year) between the employee's projected date of retirement for age sixty-two (62) and the date of his retirement for disability. That part of the disability annuity constituting the employee's early optional retirement pension will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B (4).

(4) *Qualified Joint and Survivor Annuity.*

Each of the pensions in paragraphs 10 B (1), (28) (2) and (3) will be reduced by multiplying the pension by the qualified joint and survivor annuity factor in Table B corresponding to the age of the employee and the age of the employee's spouse at Normal Retirement Date, or on the effective date of retirement if earlier. The resulting reduced pension payable to the employee will be multiplied by fifty percent (50%) to determine the annuity payable to the employee's surviving spouse. The computation of this qualified joint and survivor annuity in the case of an employee who dies while on the active payroll or authorized leave of absence will assume that the employee had elected to retire on the date of death.

(5) *Surviving Spouse Benefit.*

The surviving spouse benefit payable will be determined by multiplying the pension payable to the employee by forty percent (40%). If the surviving spouse is more than ten (10) years younger than the employee, the benefit will be reduced to adjust for the younger age by application of the factor from Table F corresponding (29) to the number of years the spouse is younger than the employee.

(6) *Deferred Pension.*

An employee, upon termination of employment, may elect to have his pension as determined in accordance with paragraph 10 A deferred to a later date but not beyond age sixty-five (65). Upon application for payment of the deferred pension, the computation of the pension payable in accordance with paragraph 10 B (1) or (2) will be based on the employee's age on the date of retirement following such application.

The following computations apply only to an employee who terminates with vested rights but whose age at termination when added to his accredited years of service at termination is equal to less than seventy-five (75).

(7) *Deferred Pension at Age Sixty-Five (65).*

An employee who elects to defer his pension to age sixty-five (65) will be paid the pension determined in accordance with paragraph 10 A. The pension will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10B (9).

(30) (8) *Deferred Pension Prior to Age Sixty-Five (65).*

An employee who elects to take his deferred pension on or after the date when his age plus accredited service is equal to seventy-five (75) will have the pension determined in accordance with paragraph 10 A multiplied by the actuarial discount factor in Table C corresponding to the age of the employee when the deferred pension begins. The pension will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B (9).

(9) *Qualified Joint and Survivor Annuity.*

The deferred pension payable to the employee will be reduced by multiplying his pension by the qualified joint and survivor annuity factor in Table D corresponding to the age of the Employee and the age of the spouse when the deferred pension begins. The resulting reduced pension payable to the employee will be multiplied by fifty percent (50%) to determine the annuity payable to the surviving spouse.

(31) (10) *Determination of Present Value of Vested Pension Payable at Age Sixty-Five (65)—Cash-Out*

The cash-out is a lump-sum payment representing the present value of the deferred pension payable to the employee at Normal Retirement Date and will be computed by multiplying the pension determined in accordance with paragraph 10 A by the factor in Table E corresponding to the age of the employee on the first day of the month following termination.

11. *Limitation of Benefits and Deductions from Benefits*

A. *Maximum Benefits.*

The maximum annual pension determined in accordance with paragraph 10 A payable under the Plan shall not exceed an amount which, when added to fifty percent (50%) of the Primary Insurance Amount payable to an employee under the Social Security Act, equals eighty percent (80%) of the employee's highest annual basic straight-time compensation during his years of accredited service. For purposes of this paragraph, the Primary Insurance Amount shall be determined under the provisions of the Social Security Act in effect on the date of the employee's retirement or termination. Except as provided below, in (32) no event may a Participant's annual Retirement Income payments under the plan, and other defined benefit plan of the Employer exceed the product of (a), (b), (c) and (d) below:

(a) is the lesser of:

(i) 100% of the Participant's highest average annual compensation during any 3 consecutive calendar years of his active participation under the Plan, or

(ii) $80,475 adjusted to reflect future Consumer Price Index change to the extent permitted by Treasury Regulations issued under Section 415 of the Code, as amended from time to time:

(b) is the ratio, but not more than 1, of such Participant's Service to 10;

(c) is the actuarial adjustment for retirement before age 55, if applicable, and

(d) is a factor equal to the lesser of (1) 1.00 or (2) 1.40 minus the ratio of (A) the sum of (i) (33) the Employer's contributions made on behalf of such Participant under any defined contribution plan (ii) any forfeitures reallocated to such Participant's account under the terms of any such plan, and (iii) any portion of such Participant's own contributions to any such plan in excess of 6% of his annual compensation (except that any such excess contributed before January 1, 1976 shall be ignored), to (B) the lesser of (i) 25% of such Participant's annual compensation or (ii) $26,825 adjusted for future Consumer Price Index changes to the extent permitted under Treasury Regulations, for each prior year of such Participant's participation.

Alternative Maximum Benefit—The annual Retirement Income payments under the Plan shall be treated as not exceeding the limitations above in the case of an Employee who was an active Participant before October 2, 1973 if such annual Retirement Income (calculated on the basis of the Straight Life Annuity form) neither exceeds:

(a) 100% of his annual rate of compensation on the earlier of October 2, 1973 or his termination date, nor (34) (b) 100% of the annual benefit which would have been payable to such Participant on retirement assuming

(i) all the terms and conditions of the Plan on the earlier of October 2, 1973 or his termination date had continued unchanged, and

(ii) his compensation on October 2, 1973 continued to his termination date.

In the case of an Employee who ceased employment before October 2, 1973 and who becomes entitled to benefit payments beginning on or after the Effective Date, the annual benefit under this paragraph shall not be greater than the deferred vested benefit to which he was entitled as of his termination date.

B. *Minimum Benefits.*

(1) The minimum benefits payable to a participant receiving a pension first payable on or after attaining age sixty-two (62), or a disability annuity after having attained age sixty-five (65), subject to other provisions of the Plan; shall be the greater of:

(35) (a) $4.40 per month for each year, up to twenty-five (25) years, of accredited service;

(b) $110 per month for an employee having twenty-five (25) years of accredited service, plus $5.50 per month for each additional year of accredited service up to thirty (30) years;

(c) $137.50 per month for an employee with thirty (30) or more years of accredited service.

(2) The minimum disability annuity payable under the Plan, subject to other provisions of the Plan shall be $55 per month.

(3) *Mimimum Payable After Early Optional Retirement or Retirement at Age 62 or Later.*

The benefit payable to a Participant, either

(a) in accordance with the Plan's optional Early Retirement Date, or

(b) in accordance with the Plan's Normal or Mandatory Retirement Date, shall not be less than the greatest Early Retirement Income amount which may be calculated under the optional early retirement provision as of the last day of any Computation Period which ended before his retirement date.

(36) C. *Deductions for Pension or Benefits Under Other Pension Plans.*

There shall be deducted from any benefit for which an employee may be eligible under the Plan the amount of each and every payment or benefit received by such employee by reason of his retirement on account of service with any other employer where years of service with such other employer are included in years of accredited service under the Plan, provided that pension payments by Federal, State or municipal governments for service under those governments shall not be deducted hereunder.

D. *Limitation of Deductions.*

The deductions authorized by paragraph 10 C shall not be applied or made in such a manner as to reduce below ten dollars ($10.00) in any month the net amount payable to any employee receiving a benefit under the Plan, nor shall any net benefit amount payable be reduced below ten dollars ($10.00) in any month.

12. *Social Security Offset*

Effective July 1, 1979, the amount of the Social Security deduction applicable to the gross annuity, pension or

widow's benefit payable or to become payable under the provisions of the plans is eliminated.

(37) 13. *Payment of Benefits*

A. *Manner of Payment of Benefits.*

Ali benefits provided by the Plan shall be determined on an annual basis and payable, upon application, in the following manner:

(1) in the case of pensions, annuities and surviving spouse benefits, monthly payments equal to one-twelfth (1/12th) of the annual amount;

(2) in the case of a cash-out, there will be a single payment.

Payments in the case of disability may begin, in the discretion of the Company, earlier than the effective date of retirement.

No benefit payable under the plan shall be reduced after the commencement of payments except to correct an error in the determination of the benefits or if required by ERISA or governmental authority.

Effective January 1, 1981, participants who retired from the service of the Company prior to January 1, 1978 and are receiving payments under paragraph A(1) above shall have their payments increased in accordance with the following:

(38) Year Retired	*Increase In Monthly Payment*
Prior to 1958	10%
1958-1965	8%
1966-1971	6%
1972-1975	4%
1976-1977	2%

Payments to widows and surviving spouses shall be increased, in accordance with the above schedule, based upon the year in which the deceased participant retired.

No monthly payment shall be increased by less than ten dollars ($10.00).

B. *Termination of Payments.*

Payments to a participant or to a beneficiary shall terminate on the last day of the month in which the participant or beneficiary dies except that payments of a surviving spouse benefit shall terminate upon remarriage.

14. *Assignment or Nonalienation of Benefits*

Except as provided below, benefits payable under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either (39) voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The trust funds shall not in any manner be liable for, or subject to, the

debts, contracts, liabilities, enagagements or torts of any person entitled to benefits hereunder.

After a benefit is in pay status a Participant receiving such benefit may make a voluntary and revocable assignment (not to exceed ten percent (10%) of any benefit payment) provided the assignment is not for the purpose of defraying administrative costs.

15. *No Right to Employment*

The Plan shall not be construed to give any employee the right to be retained in the service of the Company or the right to be reemployed after termination or retirement.

(40) 16. *Trust Fund*

All contributions made by the Company under the Plan shall be paid to the trustee or trustees, who shall be designated by the Company, and deposited in a trust fund or funds. In accordance with paragraph 20 B, all assets of the trust funds, including investment income, shall be retained for the exclusive benefit of participants and beneficiaries, shall be used to pay benefits to such persons or to pay administrative expenses to the extent not paid by the Company, and shall not revert to or inure to the benefit of the Company prior to the satisfaction of all such benefits.

Payment by the trust in good faith to one who claims to be entitled to payment of a benefit hereunder shall discharge the trust from any further liability therefore to any other claimant.

17. *Contributions*

A. *Payment of Contributions.*

The contributions by the Company shall be made at such times as may be decided upon by the Company.

B. *Funding Policy Procedure and Amount of Contributions.*

In accordance with the funding policy established by the Company upon recommendation by the named fiduciaries based upon the advice of an enrolled actuary, the Company (41) from time to time shall make contributions, determined on an annual basis as a percentage of straight-time annual payroll, in such amounts as it shall deem necessary to carry out the objectives of the Plan, but in any event the contributions shall: (1) conform to the funding standards of Section 302 of ERISA applicable to the Plan, a defined benefit plan which was in existence prior to January 1, 1974; and (2) not be greater than the maximum amount deductible for Federal income tax purposes during the year for which the contribution is made.

C. *Payment of Expenses.*

All expenses of the Plan shall be paid by the Company, except that Plan termination insurance premiums, trustees' fees and expenses to the extent not paid by the Company, counsel fees and expenses, investment expenses (including brokerage costs, transfer taxes, shipping expenses, and charges of correspondent banks of the trustee) and any Federal, State or local taxes which may be assessed or levied against the trust fund or funds or which any trustee thereof is required to pay shall be charged to the trust fund or funds.

(42) D. *Restrictions on Recovery by Company of Contributions.*

Except as provided in paragraph 21 B, under no circumstances shall amounts of money or other things of value contributed by the Company to the trust fund be recover-

able by the Company from the trustee or from any participant or beneficiary, or be used for, or diverted to, purposes other than for the exclusive benefit of the participants and beneficiaries of the Plan; provided, however, that if a contribution is made by the Company by mistake of fact, the contribution shall be returned to the Company within one (1) year after the payment of the contribution, or if the Plan or trust (or trusts) fails to qualify under Sections 401 and 501 of the Internal Revenue Code of 1954, or (any contribution being conditioned on its deductibility under Section 404 of the Internal Revenue Code of 1954) if the deduction of any part of any contribution is disallowed, the contribution shall be returned to the Company within one (1) year after the date of denial of qualification of the Plan or trust (or trusts) or within one (1) year after the disallowance of the deduction.

E. *Plan is Non-Contributory.*

No contributions by employees shall be required hereunder.

(43) 18. *Fiduciaries*

A. *Named Fiduciaries.*

(1) Persons from time to time occupying the following offices of the Company are hereby designated as named fiduciaries and shall have authority jointly to control and manage the operation and administration of the Plan (including the appointment of the Plan administrator): Chief Executive Officer, Chief Financial Officer, and Controller. The Company may designate other persons who, upon acceptance of such designation, shall serve as named fiduciaries either instead of or in addition to those named above. Any such designation and acceptance shall be in writing and retained by the Plan administrator.

(2) The named fiduciaries may allocate fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) among named fiduciaries and may designate per-

sons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) under the Plan, in accordance with the following procedure:

(44) The Chief Executive Officer of the Company shall in writing allocate fiduciary responsibilities among the named fiduciaries, and the acceptance of such responsibilities by the named fiduciaries shall be in writing. Any designation by a named fiduciary of persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) shall be in writing, a copy of which shall be delivered to the designee, and shall specify the fiduciary responsibilities to be carried out by the designee. Written notice of any such designation shall be given to all other named fiduciaries by the named fiduciary who makes the designation. Any such allocations and acceptances, and designations, shall be retained by the Plan administrator.

(3) A named fiduciary, or a fiduciary designated by a named fiduciary pursuant to the procedure set forth in paragraph 18 A (2), may employ one or more persons to render advice, with regard to any responsibility such fiduciary has under the Plan.

(45) (4) A person who is a named fiduciary with respect to control or management of the assets of the Plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of the Plan.

(5) A majority of the named fiduciaries may jointly, with the prior approval of the Board of Trustees of the Company, direct any trustee appointed pursuant to paragraph 16 to invest all or any part of the trust fund held by such trustee in

insurance policies and contracts, including group annuity contracts, and from time to time to liquidate any such investment in whole or in part.

B. *Fiduciary Responsibilities.*

The named fiduciaries, and all other persons having fiduciary responsibilities under the law, shall discharge their duties with respect to the Plan in accordance with the law, and solely in the interest of the participants and beneficiaries and

(1) for the exclusive purpose of:

(a) providing benefits to participants and their beneficiaries; and

(46) (b) defraying reasonable expenses of administering the Plan;

(2) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the law.

C. *General Provisions Concerning Fiduciaries.*

(1) Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan (including service both as trustee and administrator).

(47) (2) Responsibilities for the operation and administration of the Plan may be allocated in accordance with the following procedure:

The Chief Executive Officer of the Company shall allocate responsibilities for the operation and administration of the Plan, and shall notify all named fiduciaries of any such allocation. Any such allocation shall be in writing, a copy of which shall be delivered to the person to whom the responsibilities are allocated, and shall be retained by the Plan administrator.

19. *Powers and Duties of Administrator*

A. *Rules and Decisions.*

The administrator may adopt such rules as he deems necessary, desirable, or appropriate. All rules and decisions of the administrator shall be uniform and consistent as to all participants and beneficiaries in similar circumstances. When making a determination or calculation, the administrator shall be entitled to rely upon information furnished by a participant or beneficiary, the Company, the legal counsel of the Company, the enrolled actuary, any trustee of the trusts, or the independent qualified public accountant.

(48) B. *Records and Reports.*

The administrator shall exercise such authority and responsibility, and perform such duties, as may be required in order to comply with ERISA and governmental regula-

tions issued thereunder relating to records of participants' service, accrued benefits, and benefits which are nonforfeitable under the Plan; notifications to participants, annual registration with the Internal Revenue Service; annual reports to the Department of Labor; and reports to the Pension Benefit Guaranty Corporation.

C. *Other Administrator Powers and Duties.*

The administrator shall have such other duties and powers as may be necessary to discharge his duties hereunder, including but not by way of limitation, the following:

(1) to decide all claims and questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder and to construe and interpret the Plan or the plans as may be necessary in connection therewith;

(49) (2) to prescribe procedures to be followed by participants or beneficiaries filing applications for benefits;

(3) to prepare and distribute, in such manner as he determines to be appropriate, information explaining the Plan;

(4) to receive from the Company and from participants such information as shall be necessary for the proper administration of the Plan;

(5) to furnish the Company, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;

(6) to receive and review the periodic valuation of the Plan made by the enrolled actuary;

(7) to receive, review and keep on file (as he deems convenient or proper) reports of the financial condition, and of the receipts and disbursements, of the trust fund from the trustee or trustees;

(50) (8) to appoint or employ individuals to assist in the administration of the Plan and to perform the specific operational and administrative duties and functions necessary to Plan administration;

(9) to receive service of legal process, as agent for the Plan.

The administrator shall have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a pension under the Plan.

20. *Administration*

A. *Restriction on Powers.*

No rule or regulation under the Plan shall be made and no action under its provisions shall be taken which, with respect to contributions or benefits, or in any other respect, discriminates in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

B. *Ascertainment of Benefits.*

It shall be the duty of the administrator to examine into the facts relating to each employee and determine his rights under the Plan and the amount and (51) extent of the benefit which shall be payable to him or his spouse and the

dates such benefit shall commence and cease. Such determination, if made in conformance with the provisions of the Plan, shall be final and binding upon such employee and employee's spouse. In making such determination, the administrator shall follow the provisions of the Plan and shall not pay or cause to be paid any benefit, either during the existence or upon the discontinuance of the Plan, which would cause any part of the trust fund or funds to be used for or diverted to purposes other than for the exclusive benefit of the employees of the Company or their spouses pursuant to the provisions of the Plan at any time prior to the satisfaction of all liabilities with respect thereto under the Plan.

C. *Claims*

(1) When any claim for benefits by a participant or a beneficiary is denied, the claimant shall be notified in writing sent by certified mail of the specific reasons for the denial, in a manner calculated to be understood by the claimant.

(52) (2) If the claim for benefits of a participant or beneficiary is denied, the claimant shall have the right to a full and fair review of the decision denying such benefits, provided that the request for review, which shall be in writing and addressed to the administrator, shall be made within ninety (90) days after the claimant receives notice of the denial of benefits.

D. *Records.*

The administrator shall maintain or cause to be maintained accounts showing the fiscal transactions of the Plan, and shall cause to be kept, in convenient form, such data as may be necessary for actuarial valuations under the Plan and such other matters and records as may be required to comply with ERISA.

21. *Termination or Modification of the Plan*

A. *Right to Terminate or Modify.*

The Company expects to continue the Plan indefinitely and to make contributions to the trust fund or funds under the Plan to meet the costs of all benefits provided hereunder, as a current charge upon operating expenses. The Company, however, except as it may have (53) otherwise expressly agreed, reserves the right in its absolute discretion at any time and from time to time, to amend, modify or terminate in whole or in part the Plan and the contributions thereunder. No such amendment, modification or termination, however, shall vest in the Company directly or indirectly any interest, ownership or control in the trust fund, except to the extent of any balance remaining after satisfaction of all liabilities under the Plan. No such amendment or modification shall retroactively affect adversely employees' benefits under the Plan.

B. *Rights Upon Termination.*

In the event of termination of the Plan, or partial termination of the Plan, each participant's interest is nonforfeitable and to the extent funded, assets shall be allocated among Plan beneficiaries in the following levels of priorities in accordance with the provisions of ERISA in effect on August 1, 1975, the effective date of the Plan adopted in conformity with ERISA:

(1) Equally among individuals in the following two subcategories:

(54) (a) in the case of benefits in pay status three (3) years prior to termination (at the lowest pay level in that period and at the lowest benefit level under the Plan during the five [5] years prior to termination); and

(b) in the case of benefits which would have been in pay status three (3) years prior to termination had the partici-

pant been retired (and had his benefits commenced then, at the lowest benefit level under the Plan during the five [5] years prior to termination).

(2) All other benefits up to the insurance limitations guaranteed by the Pension Benefit Guaranty Corporation.

(3) All other (meaning uninsured) vested benefits, and

(4) All other benefits under the Plan; Provided, that upon termination, the Plan may provide subclasses and categories within the above levels of priorities; provided, further, that if, following termination of the trust (55) fund or funds and after satisfaction of all liabilities with respect to employees, retired employees and joint annuitants under the Plan, there is any balance remaining, the trustee or trustees shall dispose of such balance in such manner as the Company may direct, including refund to the Company.

22. *Miscellaneous*

A. *Merger or Consolidation*

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after 9/2/74, each participant in the plan shall (if the plan is terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated).

B. *Limitations if Plan Terminated Within Ten (10) Years*

If the plan is terminated or if the contributions required by Section 17 hereof are not made at any time prior to December 31, 1985, the amount of the Trust Fund (56) to be used for the benefit of any employee who is on the list of the twenty-five (25) highest paid employees of the Company as of December 31, 1975, filed with the Internal Revenue Service, whose anticipated pension or retirement allowance exceeds Fifteen Hundred Dollars ($1,500.00)

shall not exceed the sum of (a) the amount that would have been applied with respect to such employee had all the provisions of the Plan, in effect immediately prior to August 1, 1975 been continued in effect without change up to the date of said termination or failure to make contributions; plus (b) the amount to be applied with respect to such employee for the increased benefits provided by the amendments to the Plan, effective August 1, 1975, but not exceeding the larger of Twenty Thousand Dollars ($20,000.00) or twenty per centum (20%) of the first Fifty Thousand Dollars ($50,000.00) of his average salary multiplied by the number of full years after January 1, 1976, for which the contributions required under Section 17 hereof have been made, or such larger amount as may be permissible under relevant provisions of the United States Internal Revenue Code and the Regulations thereunder at the time in force.

(57) Any excess amounts arising by application of this Paragraph shall be used and applied equitably to or on account of the other employees of the Company.

This Section shall not be construed to restrict the current payment of benefits under the Plan while the Plan is in full effect and either the full contributions required under Section 17 hereof have been made or its full current costs have been met.

If at the end of the first ten (10) years the full current costs are not met the restrictions will continue to apply until the full current costs are funded for the first time.

C. *Forfeitures*

Any forfeitures arising under this plan shall be used to reduce the Company's contribution.

* * *

[Actuarial Tables Omitted]

Exhibit D—The Consolidated Edison Retirement Plan for Management Employees, effective January 1, 1983

The Consolidated Edison
Retirement Plan for Management Employees

Effective January 1, 1983

Table of Contents

Page No.

1. Introduction 1

2. Definitions and Guides to Construction 2

   A. Definitions 2
   B. Guides to Construction 13

3. Participation 13

   A. Application of the Management Plan 13
   B. Maximum Age for Participation 13

4. Mandatory Retirement 13

5. Eligibility for a Retirement Pension 14

   A. Retirement at Age 62 or Later 14
   B. Early Optional Retirement 14
   C. Retirement or Termination for Disability 14
   D. Termination of Service in the Discretion of the Company and Voluntary Termination .. 15
   E. Participants Who Commence Employment Between Ages 55 and 60 15
   F. Cash-Out of Deferred Pension 16
   G. Repayment of Cash-Out 16

H. Age and Service Required for a Pension 17
I. Entitlement to Retirement Benefits 17

6. Eligibility for Annuities and Benefits for a Surviving Spouse 17

A. Qualified Joint & Survivor Annuity 17
B. Election—Qualified Joint & Survivor Annuity 21
C. Surviving Spouse Benefit 22

7. Vesting 23

A. Vested Rights 23
B. Accrued Pension 23
C. Conditions under which Vested Benefits will not be paid 23

8. Service Credit 24

A. Determination of Vesting Service 24
B. Determination of Accredited Service for Computation of a Pension 25
C. Other Service Recognized for Vesting or Computation of a Pension 28

9. Effective Date of Retirement and Benefits 28

10. Computation of Benefits 29

A. Computation of Annual Pension 29
B. Computation of Pensions, Annuities, or Benefits Based upon Annual Pension 32

(1) Retirement at Age Sixty-Two (62) or Later 32

(2) Early Optional Retirement and Retirement in the Discretion of the Company 32

(3) Disability Annuity Prior to Attaining Age Sixty-Two (62) 35

(4) Qualified Joint and Survivor Annuity 36

(5) Surviving Spouse Benefit 36

(6) Deferred Pension 37

(7) Deferred Pension at Age Sixty-Five (65) 37

(8) Deferred Pension Prior to Age Sixty-Five (65) 38

(9) Qualified Joint and Survivor Annuity 38

(10) Determination of Present Value of Vested Pension Payable at Age Sixty-Five (65)—Cash-Out 38

11. Limitation of Benefits and Deductions from Benefits 39

A. Maximum Benefits 39
B. Minimum Benefits 42
C. Deductions for Pension or Benefits Under Other Pension Plans 43
D. Limitation of Deductions 44
E. Limitation of Accrued Benefit 44
F. Transfers 44

12. Payment of Benefits 45

A. Manner of Payment of Benefits 45
B. Termination of Payments 47

13. Assignment or Non-Alienation of Benefits 47

14. No Right to Employment 48

15. Trust Fund 48

16. Contributions 49

A. Payment of Contributions 49
B. Funding Policy Procedure and Amount of Contributions 49
C. Payment of Expenses 50
D. Restrictions on Recovery by Company of Contributions 50
E. Management Plan Is Non-Contributory 51

17. Fiduciaries 51

A. Named Fiduciaries 51
B. Fiduciary Responsibilities 54
C. General Provisions Concerning Fiduciaries 55

18. Power and Duties of Plan Administrator 56

A. Rules and Decisions 56
B. Records and Reports 56
C. Other Plan Administrator Powers and Duties 57

19. Administration 58

A. Restriction on Powers 58
B. Ascertainment of Benefits 59
C. Claims 59
D. Records 60

20. Termination or Modification of the Management Plan 60

A. Right to Terminate or Modify 60
B. Rights Upon Termination 61

21. Miscellaneous 63

A. Merger or Consolidation 63
B. Limitations if Management Plan Terminated Within Ten (10) Years 63
C. Forfeitures 64

22. Actuarial Tables

The Consolidated Edison
Retirement Plan for Management Employees

I. *Introduction*

Effective January 1, 1983, The Consolidated Edison Retirement Plan for Management Employees (the "Management Plan") has been adopted by Consolidated Edison Company of New York, Inc. (the "Company"). The Management Plan establishes the bases upon which certain benefits, including benefits for service prior to January 1, 1983, will be provided to employees of the Company on the management payroll of the Company on or after December 31, 1982, to employees who retired prior to that date as management employees, and to the eligible surviving

spouses of such employees. Effective January 1, 1983, the Company has amended The Consolidated Edison Pension and Benefits Plan (the "Weekly Plan"), which has heretofore included as participants the employees to be covered by the Management Plan. The Weekly Plan has been amended so as to avoid duplication of benefits and coverage. The Management Plan and the Weekly Plan, as amended, make provision for employees who transfer from the management to the weekly payroll, or vice-versa.

The Management Plan is intended to qualify under the requirements of the Internal Revenue Code and to comply with the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), any amendments thereto and regulations thereunder; with the provisions of the Age Discrimination in Employment Act Amendments of 1978, any amendments thereto and regulations thereunder; and any other applicable Federal law and regulations.

(2) 2. *Definitions and Guides to Construction*

A. *Definitions*

Annuity—A payment made monthly for life of recipient.

Beneficiary—A lawful spouse of a Participant and who is, or may become, eligible for benefits under the Management Plan.

Employee—Any person employed by the Company.

Management Employee—An Employee on the Company's management payroll.

Weekly Employee—An Employee on the Company's weekly payroll.

Participant—An Employee hired on his sixtieth (60th) birthday or earlier, or a former Employee with a vested right, who is eligible for benefits under the Management Plan, or who becomes eligible for benefits under the Management Plan.

Pension—A payment made monthly for life to an eligible Participant.

Plan Year—A twelve month period beginning January 1, 1976 and on each January 1st thereafter.

(3) Annual Basic Straight-Time Compensation—The Employee's regular stated rate of pay in the Employee's last pay period in each calendar year, but shall not include premium payments, overtime payments, payments under deferred compensation, incentive or other Company benefit or compensation plans, or similar payments. In the case of an hourly paid Employee, the Annual Basic Straight-Time Compensation will be determined by multiplying the Employee's hourly rate by the Employee's regular weekly schedule of hours multiplied by fifty-two (52).

Final Average Salary—The average of Annual Basic Straight-Time Compensation, to the nearest whole dollar, for the sixty (60) consecutive months of Accredited Service out of the last one hundred twenty (120) months of Accredited Service (4) which produce the highest average. For purposes of this definition only, a Break in Service shall be ignored and months of Accredited Service separated by a Break in Service shall be deemed consecutive.

Total Salary—The aggregate of the Annual Basic Straight-Time Compensation, to the nearest whole dollar, of an Employee for his years of Management Service, not to exceed the last thirty (30) years of employment, prior to Normal Retirement Date.

Vesting Service—Year of Vesting Service—A Plan Year during which an Employee has completed at least 1000 hours of service prior to Normal Retirement Date, or as provided in paragraph 8 A (1) (b).

Accredited Service—(a) The period of employment for service prior to January 1, 1976 and (b) the aggregate period of employment prior to Normal Retirement Date, within the Benefit (5) Accrual Computation Periods, for service after December 31, 1975. Except if a Cash-Out or an immediate pension is elected, a period between cessation of active employment with the Company by reason of Disability and the earlier of the end of the Disability or the attainment of age sixty-five (65) shall also be included in Accredited Service.

Management Service—(a) Accredited Service as a Management Employee on or after January 1, 1983.

(b) Accredited Service prior to January 1, 1983 by an Employee who was a Management Employee on December 31, 1982.

(c) Accredited Service prior to termination by an Employee whose employment by the Company terminated prior to January 1, 1983 and who was a Management Employee at the time of such termination.

(6) Weekly Service—Accredited Service other than Management Service.

Layoff (or laid off)—As used in the Management Plan, shall mean the separation of an Employee from the active payroll for lack of work or such other reason, in no way the

fault of the Employee, as may be determined by the Company.

Vesting Computation Period—The Plan Year beginning January 1, 1976 and on each January 1st thereafter.

Benefit Accrual Computation Period—The Plan Year beginning January 1, 1976 and on each January 1st thereafter.

Cash-Out—The distribution, prior to Normal Retirement Date at the election of the Participant of the actuarial value of one hundred percent (100%) of his non-forfeitable accrued pension benefits under the Management Plan.

One Year Break in Service—Any Vesting Computation Period in which a Participant has not completed more than 500 hours of service.

(7) Disability—Total and permanent disability which qualifies the Participant to receive Social Security disability benefits.

Hour of Service—Each Employee will be credited with an hour of service for: (1) (a) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the employer for the performance of duties and as provided for in paragraph 8 C. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and (1) (b) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the employer for reasons (such as vacation, sickness or disability) other than for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which payment is made or amounts payable to the Employee (8) become due; and (1) (c) Each hour for which back pay, irrespective of mitigation of damage, has been either awarded or agreed to

by the employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment was made; and (2) the following equivalencies shall be used for the purpose of crediting hours of service for those Participants for whom hours of service are not maintained:

i. one day of employment equals ten (10) hours of service

ii. one week of employment equals forty five (45) hours of service

iii. one month of employment equals one hundred and ninety (190) hours of service.

(9) For purposes of crediting hours for non-performance of duties, such hours shall be credited in accordance with Department of Labor Regulation 2530. 200 b-2 (c).

Normal Retirement Date—The first day of the month following the Participant's attainment of age 65.

Mandatory Retirement Date—The first day of the month following the attainment of age 70 by an Employee or a Participant; or, if an Employee is exempt from the provisions of the Age Discrimination in Employment Act of 1967, as heretofore and hereafter amended (because he or she is employed in a bona fide executive or a high policymaking position and otherwise satisfies the conditions permitting exemption), the first day of the month following his or her mandatory retirement.

(10) Projected Retirement—For Participants whose age plus Accredited Service total at least seventy-five (75) at date of retirement or termination, the later of:

(a) The first day of the month following actual retirement or termination.

(b) The first day of the month following attainment of age sixty-two (62).

For Participants whose age plus Accredited Service total less than seventy-five (75) at date of retirement or termination, Projected Retirement Date is the first day of the month following attainment of age sixty-five (65).

Projected Service—The total of all Management Service for a Participant assuming he continued in employment with the Company as a Management Employee to Projected Retirement Date.

(11) Social Security Benefit—The estimated amount of annual primary insurance benefit payable at age sixty-five (65) under Title II of the Federal Social Security Act, as determined under reasonable rules uniformly applied in accordance with the terms of the Management Plan, on the basis of such Act as in effect at the time of retirement or other termination, to which a Participant is or would be entitled, even if the Participant does not receive such benefit because of his failure to apply or because he is ineligible by reason of earnings he may be receiving. In determining the Participant's Social Security Benefit in the event of retirement or termination at or after age sixty-two (62), it shall be assumed that the Participant (12) has no further covered earnings after termination of employment. In determining the Participant's Social Security Benefit in the event of retirement or termination prior to age sixty-two (62), it shall be assumed that the Participant continued in service to age sixty-five (65) at his or her Annual Basic Straight-Time Compensation at the termination of the Participant's employment with the Company. If a cost-of-living increase in Social Security benefits has been put into

effect within the 12-month period preceding the date of determination and such increase exceeds 3%, it is assumed that the increase is being phased in over 12 months, beginning with the effective date of the increase, at the rate of 1/12th of the increase per month.

(13) B. *Guides to Construction*

(1) The masculine gender, where appearing in the Management Plan, shall be deemed to include the feminine gender.

3. *Participation*

A. *Application of the Management Plan*

If the effective date of a Participant's retirement, as determined under paragraph 9, shall be prior to January 1, 1983, the benefits to which the Participant shall be entitled shall be determined under The Consolidated Edison Pension and Benefits Plan as amended through December 31, 1982. The benefits to which all other Participants shall be entitled shall be determined under the Management Plan.

B. *Maximum Age for Participation*

No Employee who begins employment with the Company later than his sixtieth (60th) birthday shall be a Participant in the Management Plan.

4. *Mandatory retirement*

Each Employee or Participant who shall have attained age seventy (70) shall be retired from the service of the Company; provided, however, that any Employee who is exempt from the provisions of The Age Discrimination in Employment Act of 1967, as heretofore and hereafter amended (because he or she is employed in a bona fide executive or a high policy-making position and otherwise satisfies the conditions permitting exemption), may be

mandatorily retired from the service of the Company after attaining age 65.

(14) 5. *Eligibility for a Retirement Pension*

A. *Retirement at Age 62 or Later*

A Participant who shall have completed such years of Accredited Service which when added to his years of age total not less than seventy-five (75), and who shall have attained the age of 62 years, shall, upon filing a written application, be retired hereunder from the service of the Company and be entitled to a pension computed in accordance with paragraph 10 B (1). Such election shall not be revocable on or after the effective date of retirement.

B. *Early Optional Retirement*

A Participant who shall have attained an age which when added to his years of Accredited Service shall total not less than seventy-five (75) shall, upon filing a written application, be retired from the service of the Company and be entitled to a pension computed in accordance with paragraph 10 B (2). Such election shall not be revocable on or after the effective date of retirement.

C. *Retirement or Termination for Disability*

(1) A Participant, prior to having attained age sixty-five (65), whose active employment with the Company ceases because of Disability, shall be eligible for a deferred pension beginning at age sixty-five (65) if the Participant was a management Employee at the time of such cessation. Such pension will be determined as if such Participant had been continuously employed as a Management Employee for the period from such cessation to the earlier of the end of the (15) Disability or age sixty-five (65) at the Annual Basic Straight-Time Compensation in effect during the last pay period prior to such cessation.

(2) If a Participant was an Employee on December 31, 1982 and becomes disabled prior to having attained age seventy (70), such Participant may, if the Company shall so determine, be retired or terminated from the Company. Upon such retirement or termination, the Participant may be eligible for a disability annuity pursuant to paragraph 10 B (3), or a deferred pension (or a Cash-Out of his deferred pension) depending on his age and years of Accredited Service, as hereinafter provided.

D. *Termination of Service in the Discretion of the Company and Voluntary Termination*

A Participant who acquires a vested right to his accrued pension prior to having attained age sixty-five (65), and who terminates voluntarily or whose service is terminated by the Company will be eligible for a pension if his age plus years of Accredited Service shall total not less than seventy-five (75), or a deferred pension (or a Cash-Out of his deferred pension) if his age plus years of Accredited Service shall total less than seventy-five (75).

E. *Participants who Commence Employment Between Ages 55 and 60*

A Participant who commenced employment with the Company on or after his fifty-fifth (55th) birthday but not later than his sixtieth (60th) birthday and who remained in the continuous (16) employ of the Company and attained age sixty-five (65) will be entitled to a pension upon his retirement from the service of the Company.

F. *Cash-Out of Deferred Pension*

A Participant whose age plus years of Accredited Service equal less than seventy-five (75) and who on termination of service with the Company has vested rights, may, in lieu of

a deferred pension, Cash-Out the value of his pension payable at the attainment of age sixty-five (65).

The Employee will be allowed a reasonable period after termination in which to advise the Plan Administrator whether he chooses either to Cash-Out or to take a deferred pension. However, this period will not extend beyond the first day of the second month following the Employee's date of termination.

G. *Repayment of Cash-Out*

A Participant who has cashed-out his vested rights and is subsequently reemployed may regain his vested rights for the period of service on which the Cash-Out was based by paying to the trust the full amount of such Cash-Out with interest at the rate of interest used for actuarial valuation of the Management Plan at the time of the Cash-Out, compounded annually from the date of Cash-Out to the date of repayment.

(17) Vested right for any of such prior service will be suspended until the Cash-Out is fully repaid. However, any of the years of Accredited Service following reemployment will be vested.

H. *Age and Service Required for a Pension*

Except for a Participant who commenced employment with the Company on or after his fifty-fifth (55th) birthday but not later than his sixtieth (60th) birthday and who remained in the continuous employ of the Company and attained age sixty-five (65), as provided in paragraph 5 E, no Participant whose age plus years of Accredited Service equals less than seventy-five (75) shall be entitled to a pension under the Management Plan.

I. *Entitlement to Retirement Benefits*

Participants eligible for a pension upon attaining age sixty-five (65), regardless of Years of Vesting Service, shall be one-hundred percent (100%) nonforfeitably vested in their accrued benefits. A Participant shall become one-hundred percent (100%) nonforfeitably vested in his accrued benefit upon attaining age sixty-five (65).

6. *Eligibility for Annuities and Benefits for a Surviving Spouse*

A. *Qualified Joint & Survivor Annuity*

1. Eligible Participants retiring directly from employment and eligible Participants who die while in service.

(18) (i) The lawful spouse of an Employee on the active payroll or on an authorized leave of absence for any reason, shall be eligible for a qualified joint and survivor annuity for life, provided that at the time of his death the Employee shall have attained an age which, together with his then years of Accredited Service, shall total seventy-five (75) or more.

(ii) An Employee who, at the time of his retirement under the Management Plan, shall have attained an age which, together with his then years of Accredited Service shall total seventy-five (75) or more, or an Employee entitled to a pension under paragraph 5 H, shall have the amount of his pension reduced as computed in paragraph 10 B 4. to provide, upon his death, an annuity for life to his lawful spouse at the time of retirement (or on the date the pension begins, if a deferred pension is elected).

As provided in paragraph 6B, by notification in writing, on retirement, or in the case of a deferred pension, prior to

any payment of (19) the deferred pension, the Employee may decline to have his pension reduced to provide this annuity.

(iii) Any Participant who, after becoming eligible for optional early retirement or who is eligible for a retirement pension under the terms of paragraphs 5 E and 5 H, terminates employment and thereafter dies before benefit payments begin, will be assumed to have elected the optional early joint and survivor annuity effective on the date of death provided, however, that if such Participant, as provided in paragraph 6 B has declined in writing to provide the joint and survivor annuity, then none shall be provided.

(iv) If a Participant on the active management payroll (or on authorized leave of absence from such status) with a vested accrued benefit dies and such Participant has not met the eligibility requirements for an immediate pension, the Participant's lawful spouse shall be eligible for a lump-sum benefit equal to one-half the actuarial present value of the Participant's vested accrued benefit under the Management Plan. (20) Such lump-sum benefit shall be computed as one-half of the Cash-Out amount which would be computed pursuant to paragraph 10 B 10. if the Participant had, immediately prior to his death, terminated and elected a Cash-Out benefit. Such spouse may elect, in lieu of the Cash-Out, an immediate annuity payable one-twelfth monthly, determined in accordance with Table G; provided, however, that this election is not available if the annuity would be less than $50 per month.

2. Vested Participants whose benefits do not commence immediately following termination.

An Employee:

(a) who terminates or is terminated with a vested right; and

(b) whose age, together with his then years of Accredited Service, total less than seventy-five (75) at termination; and

(c) who shall have elected at termination to take a deferred pension; shall have the amount of his pension reduced in order to provide an annuity to his surviving spouse as computed under paragraph 10 B 9. Such annuity shall amount to fifty percent (50%) of the reduced pension and shall be payable upon the death of the former (21) Employee, but only to a surviving spouse who was married to the former Employee when his pension commenced.

As provided in paragraph 6 B, prior to any payment of his pension the Employee may decline in writing to accept a reduced pension to provide this annuity.

B. *Election—Qualified Joint & Survivor Annuity*

An eligible Participant may elect not to have his pension reduced to provide for a qualified joint and survivor annuity for life. One hundred and eighty (180) days prior to a Participant's Normal Retirement Date or, where applicable, the Participant's Mandatory Retirement Date, the Plan Administrator shall furnish him with a general description and explanation of the qualified joint and survivor annuity, the circumstances in which it will be provided, the right of the Participant to decline to accept the qualified joint and survivor annuity option and a general explanation as to the relative financial effect of the election on the Participant's benefits.

(22) On forms provided by the Plan Administrator, the election shall be in writing and shall be made within an election period which includes a period of ninety (90) days following the receipt by the Participant of the above information.

A Participant, at any time during the election period, may request additional information with respect to his declining or not declining the qualified joint and survivor annuity option. The Plan Administrator shall furnish such additional information within thirty (30) days of the receipt of Participant's written request. In such event, the election period shall be extended by ninety (90) calendar days immediately following the day the additional information is personally delivered or mailed to the Participant.

At any time on or before the end of the election period or extended election period, the Participant may revoke his election and make another election. Commencement of benefits may not begin until the end of the election period or extended election period.

C. *Surviving Spouse Benefit*

In the event that an Employee or a Participant described in paragraphs 6 A (1)(ii) or (iii) has declined a qualified joint and survivor annuity, there shall be provided to his lawful spouse, who was married to the Employee at the time of (23) retirement and at the time of death, a surviving spouse benefit for life or until the Employee's spouse shall remarry in which case the spouse of the Employee shall notify the Company of any remarriage. This benefit shall be suspended and shall not accrue while the Employee's spouse is an active Employee of the Company.

7. *Vesting*

A. *Vested Rights*

A Participant who completes ten (10) or more years of Vesting Service will be entitled to a non-forfeitable right of one hundred percent (100%) of his accrued pension payable at Normal Retirement Date.

B. *Accrued Pension*

The accrued pension is a pension which is or would be payable at age sixty-five (65), based on the Employee's Final Average Salary, or Total Salary, as the case may be, and years of Management Service as of the date the computation is made.

C. *Conditions Under Which Vested Benefits Will Not Be Paid*

In no event will a Participant receive a deferred monthly pension if:

(24) (a) He dies before retirement and his spouse is not entitled to benefits under paragraph 6, or

(b) He has received a Cash-Out from the Management Plan.

If a Participant entitled to a deferred pension, or a Beneficiary, fails to make application for a deferred pension or a related benefit on or before the date when either the Participant or Beneficiary would otherwise be entitled to the benefit, no payment will commence before application is made.

8. *Service Credit*

A. *Determination of Vesting Service*

Vesting Service shall be determined as follows:

1. (a) *Prior to January 1, 1976:*

Within each calendar year the number of months that the Employee is employed by the Company in other than a temporary status will be added and if the total number of

months is six (6) or more, the Employee will be credited with one (1) year of Vesting Service. A fraction of a month will be counted as one (1) month.

(b) *After December 31, 1975:*

In accordance with the definition of Vesting Service, paragraph 2 A of the Management Plan, or if more favorable to the Participant, one year of Vesting Service if the Participant is employed (25) in continuous employment during any calendar year prior to attaining Normal Retirement Date for six months during the year.

2. An Employee with less than ten (10) years of Vesting Service whose consecutive One-Year Breaks in Service are either equal to or greater than his years of Vesting Service will lose such prior Vesting Service unless the break in service was caused by Layoff or disability (whether or not constituting Disability as defined in paragraph 2 A of the Management Plan).

B. *Determination of Accredited Service for Computation of a Pension*

For Service Prior to January 1, 1976

1. (a) Accredited Service for the computation of a pension will be the total of the months and years of service the Employee was continuously in the employ of the Company in other than a temporary status. For the purpose of determining service credit, a fraction of a month will be credited as one (1) month. Each period of Accredited Service will be added and the total of such service will be used in computing the pension.

For Service after December 31, 1975

1. (b) In accordance with the definition of Accredited Service, paragraph 2 A of the Management Plan.

(26) 2. Employees who have acquired ten (10) years of Accredited Service shall be credited with all additional years and months of service with the Company prior to Normal Retirement Date regardless of a subsequent break in service. However, no period constituting a break in service will be included in the period of Accredited Service for computation of a pension.

3. If an allowance has been paid under the provisions of the Company's former Pension Plan for Retirement for Age or the Company's former Employees Security Plan (the "plans"), based upon Accredited Service performed prior to August 1, 1975 and such period of Accredited Service is included in the computation of a pension under the Management Plan, the actuarial present value of the pension so computed will be reduced by the total of such allowance payments. The resulting present value, as so reduced, of the pension will be the basis for determining the monthly pension.

4. The application of the foregoing provisions solely as they pertain to Accredited Service prior to the (27) effective date of the Management Plan and shall not be interpreted so as to reduce the years and months of Accredited Service which would have been used in the computation of the Employee's pension under the provisions of the plans.

5. The effect of a Cash-Out of vested rights on Accredited Service will be to deny such credit for prior service until the Cash-Out is fully repaid, as provided in paragraph 5 G.

6. A Participant receiving a pension or annuity under the Management Plan or the plans will, if reemployed after August 1, 1975, continue to receive such pension or annuity payments during the period of employment. Upon subsequent retirement, there will be payable to such Participant an addition to his pension or annuity based on the service accredited from the date of reemployment. Pension or annuity payments suspended under the provisions of the plans applicable to employees who were reemployed prior to August 1, 1975 shall continue to be suspended and shall otherwise be subject to the provisions of the plans.

(28) 7. Service after Normal Retirement Date shall not be Accredited Service.

C. *Other Service Recognized for Vesting or Computation of a Pension*

Accredited Service and Vesting Service shall include periods of interruptions in service due to:

1. To the extent required by law, active military, naval, marine or related service of the United States or the State of New York, or leaves of absence granted pursuant to Company policy for World War II defense employment (1941-1946);

2. Absence because of illness under sick leave granted; or

3. Absence under leave granted for any other reason, for time not exceeding a total of six (6) months.

9. *Effective Date of Retirement and Benefits*

The effective date of retirement and benefits shall be the first day of the calendar month next following:

(A) the date upon which an Employee files a written application to retire or to receive a deferred pension;

(B) the effective date of the separation by the Company of the Employee from the active payroll, in the case of disability retirements and retirements in the discretion of the Company;

(C) the month in which a Participant attains age seventy (70).

(29) 10. *Computation of Benefits*

A. *Computation of Annual Pension*

1. For Participants in the Management Plan who are first hired by the Company on or after January 1, 1983, the annual amount of pension will be equal to:

1.833% of the Participant's Final Average Salary for each year of Management Service up to a maximum of 30 years

minus

1.666% of the Participant's Social Security Benefit for each year of Management Service up to a maximum of 30 years

plus

.5% of the Participant's Final Average Salary for each year of Management Service in excess of 30.

2. For (x) Participants in the Management Plan who were employed by the Company on December 31, 1982, and (y) Participants who terminated with vested rights prior to

December 31, 1982, are reemployed after that date, and either regain their vested rights pursuant to paragraph 5 G or did not begin to receive a pension hereunder (30) prior to such rehire, the annual amount of pension will be equal to the greater of:

(a) The pension determined in accordance with paragraph 10 A 1. above

(b) The pension determined by computing 2.2% of Total Salary increased by .125% for each calendar month of Management Service in excess of 30 years.

The Annual Basic Straight-Time Compensation for any period of Management Service shall be considered to be not less than such compensation as was applicable to the Employee for the fourteenth (14th) accredited calendar year prior to the calendar year of his retirement, but in no event less than three thousand dollars ($3,000); and for an Employee whose Annual Basic Straight-Time Compensation at the time of retirement is at a rate of three thousand dollars ($3,000) or less, the Annual Basic Straight-Time Compensation for any period of Management Service shall be considered to be not less than an annual amount determined at the rate of his Annual Basic Straight-Time Compensation at the time of retirement.

(31) 3. All those Employees retiring during the period July 1, 1980 through June 30, 1983 having then attained age 62 or older, if eligible to receive a benefit determined under paragraph A above, in addition to that benefit, shall receive a benefit in accordance with the following:

(a) Only Management Plan Participants who retire directly from the service of the Company during the period July 1, 1980 to June 30, 1983, and who were Management

Employees at the time of such retirement, will be eligible for this benefit.

(b) A Participant who retires at age 64 or older, will receive $41.67 per month from the date of retirement until June 30, 1983.

(c) A Participant who retires at age 62 or 63 will receive $33.34 per month until age 64 or June 30, 1983, if earlier, and thereafter will receive $41.67 per month until June 30, 1983.

(d) A surviving spouse of a Participant eligible for the additional benefit provided under this paragraph 10 A 3 will receive, until June 30, 1983, one-half of the additional benefit that the Participant would have received had he survived.

(32) B. *Computation of Pensions, Annuities, or Benefits Based Upon Annual Pension*

The following pensions, annuities or benefits as specified, will be based upon the annual pension determined in accordance with paragraph 10.

The following computations apply only to an Employee who terminates with vested rights but whose age when added to his accredited years of service at termination *is equal to seventy-five (75) or more.*

1. Retirement at Age Sixty-Two (62) or Later

The pension payable to an Employee retiring at age 62 or later will be the amount determined in accordance with paragraph 10 A reduced, however, if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B 4.

2. *Early Optional Retirement and Retirement in the Discretion of the Company*

This category applies to an Employee who retires prior to age 62. The pension payable to such Employee will be determined as follows:

(a) For Participants in the Management Plan who are first hired by the Company on or after January 1, 1983, the annual amount of pension will be equal to 1.833% of Final Average Salary times Projected Service up to 30 years, multiplied by the ratio (33) of actual Management Service to Projected Service, and further multiplied by the appropriate discount factor from column I of Table A,

minus

1.666% of Social Security Benefit times Projected Service up to 30 years, multiplied by the ratio of actual Management Service to Projected Service, and further multiplied by the appropriate discount factor from column II of Table A,

plus

.5% of Final Average Salary times the years, if any, of Projected Service in excess of 30, multiplied by the ratio of actual Management Service to Projected Service, and further multiplied by the appropriate discount factor from column I of Table A.

(34) (b) For (x) Participants in the Management Plan who were employed by the Company on December 31, 1982, and (y) Participants who terminated with vested rights prior to December 31, 1982, are reemployed after that date, and either regain their vested rights pursuant to paragraph 5 G or did not begin to receive a pension prior to such rehire, the annual amount of pension will equal the greater of:

(i) The amount determined in accordance with paragraph 10 B 2.(a) above.

(ii) 2.2% of Total Salary increased by .125% for each calendar month of Management Service in excess of 30 years, and multiplied by the appropriate discount factor from column I of Table A.

The Annual Basic Straight-Time Compensation for any period of Accredited Service shall be considered to be not less than such compensation as was applicable to the Employee for the fourteenth (14th) accredited calendar year prior to the calendar year of his retirement, but in no event less than three thousand dollars ($3,000); and for an Employee whose Annual Basic Straight-Time Compensation at the time of (35) retirement is at a rate of three thousand dollars ($3,000) or less, the Annual Basic Straight-Time Compensation for any period of Accredited Service shall be considered to be not less than an annual amount determined at the rate of his Basic Straight-Time Compensation at the time of retirement. The pension payable to the Employee will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B 4.

3. *Disability Annuity Prior to Attaining Age Sixty-Two (62)*

The annuity payable to a Participant described in paragraph 5 C 2. will be equal to the pension determined in accordance with paragraph 10 B 2. (b)(ii) plus an amount which when added to such pension will yield an annuity in an amount calculated by reducing the pension determined in accordance with paragraph 10 A 2. (b) by 0.125% for each calendar month (1-1/2% per year) between the Participant's projected date of retirement at age sixty-two (62) and the date of his retirement for disability. That part of the

disability annuity constituting the Participant's pension determined in accordance with paragraph 10 B 2. (b)(ii) will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B 4.

(36) 4. *Qualified Joint & Survivor Annuity*

Each of the pensions in paragraphs 10 B (1), (2) and (3) will be reduced by multiplying the pension by the qualified joint and survivor annuity factor in Table B corresponding to the age of the Employee and the age of the Employee's spouse at Normal Retirement Date, or on the effective date of retirement if earlier. The resulting reduced pension payable to the Employee will be multiplied by fifty percent (50%) to determine the annuity payable to the Employee's surviving spouse. The computation of this qualified joint and survivor annuity in the case of an Employee who dies while on the active payroll or authorized leave of absence will assume that the Employee had elected to retire on the date of death.

5. *Surviving Spouse Benefit*

The surviving spouse benefit payable will be determined by multiplying the pension payable to the Employee by forty percent (40%). If the surviving spouse is more than ten (10) years younger than the Employee, the benefit will be reduced to adjust for the younger age by application of the factor from Table F corresponding to the number of years the spouse is younger than the Employee.

(37) 6. *Deferred Pension*

An Employee, upon termination of employment, may elect to have his pension as determined in accordance with paragraph 10 A deferred to a later date but not beyond age sixty-five (65). Upon application for payment of the

deferred pension, the computation of the pension payable in accordance with paragraph 10 B (1) or (2) will be based on the Employee's age on the date of retirement following such application.

The following computations apply only to an Employee who terminates with vested rights but whose age at termination when added to his accredited years of service at termination is equal *to less than seventy-five* (75).

7. *Deferred Pension at Age Sixty-Five (65)*

An Employee who elects to defer his pension to age sixty-five (65) will be paid the pension determined in accordance with paragraph 10 B 2., except that Table A factors will not apply. The pension will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B 9.

(38) 8. *Deferred Pension Prior to Age Sixty-Five (65)*

An Employee who elects to take his deferred pension on or after the date when his age plus Accredited Service is equal to seventy-five (75) will have the pension determined in accordance with paragraph 10 B 2. except that Table C factors will apply in lieu of Table A. The pension will be reduced if a qualified joint and survivor annuity is not declined, as provided in paragraph 10 B 9.

9. *Qualified Joint and Survivor Annuity*

The deferred pension payable to the Employee will be reduced by multiplying his pension by the qualified joint and survivor annuity factor in Table D corresponding to the age of the Employee and the age of the spouse when the deferred pension begins. The resulting reduced pension payable to the employee will be multiplied by fifty percent

(50%) to determine the annuity payable to the surviving spouse.

10. *Determination of Present Value of Vested Pension Payable at Age Sixty-Five—Cash-Out*

The Cash-Out is a lump-sum payment representing the present value of the deferred pension payable to the Employee at Normal Retirement Date and will (39) be computed by multiplying the pension determined in accordance with paragraph 10 B 7. by the factor in Table E corresponding to the age of the Employee on the first day of the month following termination.

11. *Limitation of Benefits and Deductions from Benefits*

A. *Maximum Benefits*

The maximum annual pension determined in accordance with paragraph 10 A payable under the Management Plan shall not exceed an amount which, when added to fifty percent (50%) of the Primary Insurance Amount payable to an Employee under the Social Security Act, equals eighty percent (80%) of the Employee's highest Annual Basic Straight-Time Compensation during his years of Accredited Service. For purposes of this paragraph, the Primary Insurance Amount shall be determined under the provisions of the Social Security Act in effect on the date of the Employee's retirement or termination. Except as provided below, in no event may a Participant's annual retirement income payments under the Management Plan, and other defined benefit plans of the Employer exceed the product of (a), (b), (c) and (d) below:

(a) is the lesser of:

(i) 100% of the Participant's highest average annual compensation during any 3 consecutive (40) calendar years of his active participation under the Management Plan or the Weekly Plan, or

(ii) $80,475 adjusted to reflect future Consumer Price Index changes to the extent permitted by Treasury Regulations issued under Section 415 of the Code, as amended from time to time;

(b) is the ratio, but not more than 1, of such Participant's Service to 10;

(c) is the actuarial adjustment for retirement before age 55, if applicable, and

(d) is a factor equal to the lesser of (1) 1.00 or (2) 1.40 minus the ratio of (A) the sum of (i) the Employer's contributions made on behalf of such Participant under any defined contribution plan (ii) any forfeitures reallocated to such Participant's account under the terms of any such plan, and (iii) any portion of such Participant's own contributions to any such plan in excess of 6% of his annual compensation (except that any such excess contributed before January 1, 1976 shall be ignored), (41) to (B) the lesser of (i) 25% of such Participant's annual compensation or (ii) $26,825 adjusted for future Consumer Price Index changes to the extent permitted under Treasury Regulations, for each prior year of such Participant's participation. *Alternative Maximum Benefit*—The annual retirement income payments under the Plan shall be treated as not exceeding the limitations above in the case of an Employee who was an active Participant before October 2, 1973 if such annual retirement income (calculated on the basis of the Straight Life Annuity form) neither exceeds:

(a) 100% of his annual rate of compensation on the earlier of October 2, 1973 or his termination date, nor

(b) 100% of the annual benefit which would have been payable to such Participant on retirement assuming

(i) all the terms and conditions of the Plan on the earlier of October 2, 1973 or his termination date had continued unchanged, and

(ii) his compensation on October 2, 1973 continued to his termination date.

(42) In the case of an Employee who ceased employment before October 2, 1973 and who becomes entitled to benefit payments beginning on or after August 1, 1975, the annual benefit under this paragraph shall not be greater than the deferred vested benefit to which he was entitled as of his termination date.

B. *Minimum Benefits*

1. The minimum benefits payable to a Participant receiving a pension first payable on or after attaining age sixty-two (62), or a disability annuity after having attained age sixty-five (65), subject to other provisions of the Management Plan, shall be the greater of:

(a) $4.40 per month for each year, up to twenty-five (25) years, of Management Service;

(b) $110 per month for an Employee having twenty-five (25) years of Management Service, plus $5.50 per month for each additional year of Management Service up to thirty (30) years;

(c) $137.50 per month for an Employee with thirty (30) or more years of Management Service.

2. The minimum disability annuity payable under the Management Plan, subject to other provisions of the Management Plan shall be $55 per month.

(43) 3. *Minimum Payable After Early Optional Retirement or Retirement at Age 62 or Later*

The benefit payable to a Participant, either

(a) in accordance with the Management Plan's optional early retirement provisions, or

(b) in accordance with the Management Plan's Normal or Mandatory Retirement Date, shall not be less than the greatest early retirement income amount which may be calculated under the optional early retirement provision as of the last day of any computation period which ended before his retirement date.

C. *Deductions for Pension or Benefits Under Other Pension Plans*

There shall be deducted from any benefit for which an Employee may be eligible under the Management Plan the amount of each and every payment or benefit received by such Employee by reason of his retirement on account of service with any other employer where years of service with such other employer are included in years of Accredited Service under the Management Plan, provided that pension payments by Federal, State or municipal governments for service under those governments shall not be deducted hereunder.

(44) D. *Limitation of Deductions*

The deductions authorized by paragraph 11 C shall not be applied or made in such a manner as to reduce below ten dollars ($10.00) in any month the net amount payable to any Employee receiving a benefit under the Management Plan, nor shall any net benefit amount payable be reduced below ten dollars ($10.00) in any month.

E. *Limitation of Accrued Benefit*

In addition to other limitations set forth in the Management Plan and notwithstanding any other provisions of the Management Plan, the accrued benefit, including the right to any optional benefit provided in the Management Plan (and all other defined benefit plans required to be aggregated with the Management Plan under the provisions of section 415 of the Internal Revenue Code of 1954), shall not increase to an amount in excess of the amount permitted under section 415 of the Internal Revenue Code of 1954 as amended by the Tax Equity and Fiscal Responsibility Act of 1982.

F. *Transfers*

A Participant whose Accredited Service consists of both Weekly Service and Management Service and who is eligible for a benefit under the Management Plan shall in any event be entitled to a benefit under the Management Plan which is not less than the benefit computed under paragraph 10A (the "Basic Benefit").

(45) If such Participant was a Management Employee at the time of termination of the Participant's employment with the Company, the Participant shall be entitled to the greater of

1. the Basic Benefit, or

2. the benefit which would be payable under the Management Plan if all of the Participant's Accredited Service had been Management Service, reduced by the amount of any benefit to which the Participant shall be entitled under the Weekly Plan.

12. *Payment of Benefits*

A. *Manner of Payment of Benefits*

All benefits provided by the Management Plan shall be determined on an annual basis and payable, upon application, in the following manner:

1. in the case of pensions, annuities and surviving spouse benefits, monthly payments equal to one-twelfth (1/12th) of the annual amount;

2. in the case of a Cash-Out, there will be a single payment.

(46) Payments in the case of disability may begin, in the discretion of the Company, earlier than the effective date of retirement.

No benefit payable under the Management Plan shall be reduced after the commencement of payments except to correct an error in the determination of the benefits or if required by ERISA or governmental authority.

Effective January 1, 1981, Participants who retired from the service of the Company prior to January 1, 1978 and are receiving payments under paragraph A (1) above shall have their payments increased in accordance with the following:

Year Retired	*Increase In Monthly Payment*
Prior to 1958	10%
1958 - 1965	8%
1966 - 1971	6%
1972 - 1975	4%
1976 - 1977	2%

Payments to widows and surviving spouses shall be increased, in accordance with the above schedule, based upon the year in which the deceased Participant retired.

No monthly payment shall be increased by less than ten dollars ($10.00).

(47) *Termination of Payments*

Payments to a Participant or to a Beneficiary shall terminate on the last day of the month in which the Participant or Beneficiary dies except that payments of a surviving spouse benefit shall terminate upon remarriage.

13. *Assignment or Non-Alienation of Benefits*

Except as provided below, benefits payable under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Management Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The trust funds

shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

After a benefit is in pay status a Participant receiving such benefit may make a voluntary and revocable assignment (not to exceed ten percent (10%) of any benefit payment) provided the assignment is not for the purpose of defraying administrative costs.

(48) 14. *No Right to Employment*

The Management Plan shall not be construed to give any Employee the right to be retained in the service of the Company or the right to be reemployed after termination or retirement.

15. *Trust Fund*

All contributions made by the Company under the Management Plan shall be paid to the trustee or trustees, who shall be designated by the Company, and deposited in a trust fund or funds. In accordance with paragraph 19 B, all assets of the trust funds, including investment income, shall be retained for the exclusive benefit of Participants and Beneficiaries, shall be used to pay benefits to such persons or to pay administrative expenses to the extent not paid by the Company, and shall not revert to or inure to the benefit of the Company prior to the satisfaction of all such benefits.

Payment by the trust in good faith to one who claims to be entitled to payment of a benefit hereunder shall discharge the trust from any further liability therefore to any other claimant.

In the discretion of the Company, the assets of the aforementioned trust fund or funds may be held by a single

trustee, together and commingled with the assets of the trust fund or funds provided for under the Weekly Plan, provided that the beneficial interest of each trust fund (49) in the commingled assets shall be separately accounted for and the beneficial interest of the trust fund or funds under the Management Plan shall be applied solely in accordance with the Management Plan and shall not be available to provide benefits under the Weekly Plan, or for any other purpose. Expenses and taxes, to the extent paid from the commingled trust assets, shall be equitably divided between the trust fund or funds under the Management Plan and the trust fund or funds under the Weekly Plan.

The Named Fiduciaries of the Management Plan are hereby authorized to take such action as may be necessary to cause the respective beneficial interests properly allocable to the Weekly Plan and to the Management Plan, in the assets of the trust fund held pursuant to The Consolidated Edison Pension and Benefits Plan on December 31, 1982, to be determined and thenceforth accounted for as two separate trust funds.

16. *Contributions*

A. *Payment of Contributions*

The contributions by the Company shall be made at such times as may be decided upon by the Company.

B. *Funding Policy Procedure and Amount of Contributions*

In accordance with the funding policy established by the Company upon recommendation by the Named Fiduciaries based upon the advice of an enrolled actuary, the Company from time (50) to time shall make contributions, determined on an annual basis as a percentage of straight-time

annual payroll for Management Employees, in such amounts as it shall deem necessary to carry out the objectives of the Management Plan, but in any event the contributions shall: (1) conform to the funding standards of Section 302 of ERISA; and (2) not be greater than the maximum amount deductible for Federal income tax purposes during the year for which the contribution is made.

C. *Payment of Expenses*

All expenses of the Management Plan shall be paid by the Company, except that plan termination insurance premiums, trustees' fees and expenses to the extent not paid by the Company, counsel fees and expenses, investment expenses (including brokerage costs, transfer taxes, shipping expenses, and charges of correspondent banks of the trustee) and any Federal, State or local taxes which may be assessed or levied against the trust fund or funds or which any trustee thereof is required to pay shall be charged to the trust fund or funds.

D. *Restrictions on Recovery by Company of Contributions*

Except as provided in paragraph 20 B, under no circumstances shall amounts of money or other things of value contributed by the Company to the trust fund be recoverable by (51) the Company from the trustee or from any Participant or Beneficiary, or be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and Beneficiaries of the Management Plan; provided, however, that if a contribution is made by the Company by mistake of fact, the contribution shall be returned to the Company within one (1) year after the payment of the contribution, or if the Management Plan or the trust (or trusts) fails to qualify under Sections 401 and 501 of the Internal Revenue Code of 1954, or (any contribution being conditioned on its deductibility under Section 404 of the

Internal Revenue Code of 1954) if the deduction of any part of any contribution is disallowed, the contribution shall be returned to the Company within one (1) year after the date of denial of qualification of the Management Plan or trust (or trusts) or within one (1) year after the disallowance of the deduction.

E. *Management Plan is Non-Contributory*

No contributions by Employees shall be required hereunder.

17. *Fiduciaries*

A. *Named Fiduciaries*

1. Persons from time to time occupying the following offices of the Company are hereby designated as Named Fiduciaries and shall have authority jointly to control (52) and manage the operation and administration of the Management Plan (including the appointment of the Plan Administrator): Chief Executive Officer, Chief Financial Officer, and Chief Accounting Officer. The Company may designate other persons who, upon acceptance of such designation, shall serve as Named Fiduciaries either instead of or in addition to those named above. Any such designation and acceptance shall be in writing and retained by the Plan Administrator.

2. The Named Fiduciaries may allocate fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) among Named Fiduciaries and may designate persons other than Named Fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) under the Management Plan, in accordance with the following procedure:

The Chief Executive Officer of the Company shall in writing allocate fiduciary responsibilities among the named Fiduciaries, and the acceptance of such responsibilities by the Named Fiduciaries shall be in writing. Any designation by a Named Fiduciary of persons other than Named Fiduciaries to carry out (53) fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) shall be in writing, a copy of which shall be delivered to the designee, and shall specify the fiduciary responsibilities to be carried out by the designee. Written notice of any such designation shall be given to all other Named Fiduciaries by the Named Fiduciary who makes the designation. Any such allocations and acceptances and designations, shall be retained by the Plan Administrator.

3. A Named Fiduciary, or a fiduciary designated by a Named Fiduciary pursuant to the procedure set forth in paragraph 17 A 2., may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the Management Plan.

4. A person who is a Named Fiduciary with respect to control or management of the assets of the Management Plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of the Management Plan.

5. A majority of the Named Fiduciaries may jointly, with the prior approval of the Board of Trustees of the Company, direct any trustee appointed pursuant to paragraph 15 to invest all or any part of the trust (54) fund held by such trustee in insurance policies and contracts, including group annuity contracts, and in tax-exempt group trusts, and from time to time to liquidate any such investment in whole or in part.

B. *Fiduciary Responsibilities*

The Named Fiduciaries, and all other persons having fiduciary responsibilities under the law, shall discharge their duties with respect to the Management Plan in accordance with the law, and solely in the interest of the Participants and Beneficiaries and

1. for the exclusive purpose of:

(a) providing benefits to Participants and their Beneficiaries; and

(b) defraying reasonable expenses of administering the Management Plan;

2. with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

3. by diversifying the investments of the Management Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(55) 4. in accordance with the documents and instruments governing the Management Plan insofar as such documents and instruments are consistent with the law.

C. *General Provisions Concerning Fiduciaries*

1. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Management Plan (including service both as trustee and administrator).

2. Responsibilities for the operation and administration of the Management Plan may be allocated in accordance with the following procedure:

The Chief Executive Officer of the Company shall allocate responsibilities for the operation and administration of the Management Plan, and shall notify all Named Fiduciaries of any such allocation. Any such allocation shall be in writing, a copy of which shall be delivered to the person to whom the responsibilities are allocated, and shall be retained by the Plan Administrator.

(56) 18. *Power and Duties of Plan Administrator*

A. *Rules and Decisions*

The Plan Administrator may adopt such rules as he deems necessary, desirable, or appropriate. All rules and decisions of the Plan Administrator shall be uniform and consistent as to all participants and beneficiaries in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant or Beneficiary, the Company, the legal counsel of the Company, the enrolled actuary, any trustee of the trusts, or the independent qualified public accountant.

B. *Records and Reports*

The Plan Administrator shall exercise such authority and responsibility, and perform such duties, as may be required in order to comply with ERISA and governmental regulations issued thereunder relating to records of Participants' service, accrued benefits, and benefits which are nonforfeitable under the Management Plan; notifications to participants, annual registration with the Internal Revenue Serv-

ice; annual reports to the Department of Labor; and reports to the Pension Benefit Guaranty Corporation.

(57) C. *Other Plan Administrator Powers and Duties*

The Plan Administrator shall have such other duties and Powers as may be necessary to discharge his duties hereunder, including but not by way of limitation, the following:

1. to decide all claims and questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder and to construe and interpret the Management Plan or the plans as may be necessary in connection therewith;

2. to prescribe procedures to be followed by Participants or Beneficiaries filing applications for benefits;

3. to prepare and distribute, in such manner as he determines to be appropriate, information explaining the Management Plan;

4. to receive from the Company and from Participants such information as shall be necessary for the proper administration of the Management Plan;

5. to furnish the Company, upon request, such annual reports with respect to the administration of the Management Plan as are reasonable and appropriate;

6. to receive and review the periodic valuation of the Management Plan made by the enrolled actuary;

(58) 7. to receive, review and keep on file (as he deems convenient or proper) reports of the financial condition, and of the receipts and disbursements, of the trust fund from the trustee or trustees;

8. to appoint or employ individuals to assist in the administration of the Management Plan and to perform the specific operational and administrative duties and functions necessary to plan administration;

9. to receive service of legal process, as agent for the Management Plan.

The Plan Administrator shall have no power to add to, subtract from or modify any of the terms of the Management Plan, or to change or add to any benefits provided by the Management Plan, or to waive or fail to apply any requirements of eligibility for a pension under the Management Plan.

19. *Administration*

A. *Restriction on Powers*

No rule or regulation under the Management Plan shall be made and no action under its provisions shall be taken which, with respect to contributions or benefits, or in any other respect, discriminates in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(59) B. *Ascertainment of Benefits*

It shall be the duty of the Plan Administrator to examine into the facts relating to each Employee and determine his rights under the Management Plan and the amount and extent of the benefit which shall be payable to him or his spouse and the dates such benefit shall commence and cease. Such determination, if made in conformance with the provisions of the Management Plan, shall be final and binding upon such Employee and Employee's spouse.

In making such determination, the Plan Administrator shall follow the provisions of the Management Plan and shall not pay or cause to be paid any benefit, either during the existence or upon the discontinuance of the Management Plan, which would cause any part of the trust fund or funds to be used for or diverted to purposes other than for the exclusive benefit of the Employees of the Company or their spouses pursuant to the provisions of the Management Plan at any time prior to the satisfaction of all liabilities with respect thereto under the Management Plan.

C. *Claims*

1. When any claim for benefits by a Participant or a Beneficiary is denied, the claimant shall be notified in writing sent by certified mail of the specific reasons for the denial, in a manner calculated to be understood by the claimant.

(60) 2. If the claim for benefits of a Participant or Beneficiary is denied, the claimant shall have the right to a full and fair review of the decision denying such benefits, provided that the request for review, which shall be in writing and addressed to the Plan Administrator, shall be made within ninety (90) days after the claimant receives notice of the denial of benefits.

D. *Records*

The Plan Administrator shall maintain or cause to be maintained accounts showing the fiscal transactions of the Management Plan, and shall cause to be kept, in convenient form, such data as may be necessary for actuarial valuations under the Management Plan and such other matters and records as may be required to comply with ERISA.

20. *Termination or Modification of the Management Plan*

A. *Right to Terminate or Modify*

The Company expects to continue the Management Plan indefinitely and to make contributions to the trust fund or funds under the Management Plan to meet the costs of all benefits provided hereunder, as a current charge upon operating expenses. The Company, however, except as it may have otherwise expressly agreed, reserves the right in its absolute discretion at any time and from time to time, to amend, modify (61) or terminate in whole or in part the Management Plan and the contributions thereunder. No such amendment, modification or termination, however, shall vest in the Company directly or indirectly any interest, ownership or control in the trust fund, except to the extent of any balance remaining after satisfaction of all liabilities under the Management Plan. No such amendment or modification shall retroactively affect adversely Employees' benefits under the Management Plan.

B. *Rights Upon Termination*

In the event of termination of the Management Plan, or partial termination of the Management Plan, each Participant's interest is nonforfeitable and to the extent funded, assets shall be allocated among Beneficiaries in the following levels of priorities in accordance with the provisions of ERISA:

1. Equally among individuals in the following two subcategories:

(a) in the case of benefits in pay status three (3) years prior to termination (at the lowest pay level in that period and at the lowest benefit level under the Management Plan during the five (5) years prior to termination); and

(62) (b) in the case of benefits which would have been in pay status three (3) years prior to termination had the Participant been retired (and had his benefits commenced then, at the lowest benefit level under the Management Plan during the five (5) years prior to termination).

2. All other benefits up to the insurance limitations guaranteed by the Pension Benefit Guaranty Corporation.

3. All other (meaning uninsured) vested benefits, and

4. All other benefits under the Management Plan; provided that, upon termination, the Management Plan may provide subclasses and categories within the above levels of priorities; provided, further, that if, following termination of the trust fund or funds and after satisfaction of all liabilities with respect to Employees, retired Employees and joint annuitants under the Management Plan, there is any balance remaining, the trustee or trustees shall dispose of such balance in such manner as the Company may direct, including refund to the Company.

(63) 21. *Miscellaneous*

A. *Merger or Consolidation*

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant in the Management Plan shall (if the Management Plan is terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Management Plan had then terminated).

B. *Limitations if Management Plan Terminated Within Ten (10) Years*

If the Management Plan is terminated or if the contributions required by paragraph 16 hereof are not made at any time prior to December 31, 1992, the amount of the Trust Fund to be used for the benefit of any Employee who is on the list of the twenty-five (25) highest paid Employees of the Company as of January 1, 1983, filed with the Internal Revenue Service, whose anticipated pension or retirement allowance exceeds Fifteen Hundred Dollars ($1,500.00) per annum shall not exceed the amount that would have been applied with respect to such Employee had all the provisions of the Management Plan in effect on January 1, 1983 been continued in effect without change up to the date of said termination or failure to make (64) contributions, but not exceeding the larger of Twenty Thousand Dollars ($20,000.00) or twenty per centum (20%) of the first Fifty Thousand Dollars ($50,000.00) of his annual salary multiplied by the number of full years after January 1, 1983, for which the contributions required under paragraph 16 hereof have been made, or such larger amount as may be permissible under relevant provisions of the United States Internal Revenue Code and the Regulations thereunder at the time in force.

Any excess amounts arising by application of this paragraph shall be used and applied equitably to or on account of the other Management Employees of the Company. This paragraph shall not be construed to restrict the current payment of benefits under the Management Plan while the Management Plan is in full effect and either the full contributions required under paragraph 16 hereof have been made or its full current costs have been met.

If at the end of the first ten (10) years the full current costs are not met, the restrictions will continue to apply until the full current costs are funded for the first time.

C. *Forfeitures*

Any forfeitures arising under the Management Plan shall be used to reduce the Company's contribution.

* * *

[Actuarial Tables Omitted]

Exhibit E — Con Edison Memorandum from Harry Terhune to Employees Attaining Age 65, Subject: Pension Credit for Service After Attaining Age 65, dated January 1984 and signed by plaintiff on April 24, 1984

January 1984

To: Employees Attaining Age 65

From: Harry Terhune, Jr.

Subject: Pension Credit for Service After Attaining Age 65

Age Discrimination in Employment Act amendments of 1978 (ADEA), in most cases, permit continued employment after the attainment of age 65.

As permitted by the law, you will not accrue pension credit after your normal retirement date, which at Con Edison is the first day of the month following your attainment of age 65.

The pension benefits you earned to your normal retirement date will be suspended until your actual retirement date. However you will be eligible when you retire to all benefit improvements occurring between your normal retirement date and your actual retirement date.

You are required by the law to sign this memorandum, a copy of which will be provided to you, acknowledging that you have been informed that you will not accrue pension credit beyond your normal retirement date.

Any questions on this memorandum can be addressed, in writing, to Manager, Retirement Programs, Benefits Planning and Administration, Room 947-S, 4 Irving Place.

I acknowledge that I have read and understand this memorandum.

Martin A. Schottinfeld Name Printed	I disagree Martin A. Schottinfeld Signature of Employee
27083 Employee Number	4-24-1984 Date

Exhibit F — The Consolidated Edison Retirement Plan for Management Employees, effective January 1, 1983, as amended through Amendment No. 5, dated April 9, 1986

The Consolidated Edison
Retirement Plan for Management Employees

Effective January 1, 1983
As Amended by
Amendment No. 1, dated May 3, 1984
Amendment No. 2, dated May 9, 1984
Amendment No. 3, dated September 12, 1985
Amendment No. 4, dated October 3, 1985
Amendment No. 5, dated April 9, 1986

Table of Contents.

Page No.

1. Introduction 1

2. Definitions and Guides to Construction..... 1

   A. Definitions..... 1
   B. Guides to Construction 12

3. Participation 12

   A. Application of the Management Plan 12
   B. Maximum Age for Participation..... 12

4. Mandatory Retirement 12

5. Eligibility for a Retirement Pension 13

   A. Retirement at Age 62 or Later..... 13
   B. Early Optional Retirement 13

C. Retirement or Termination for Disability 13
D. Termination of Service in the Discretion of the Company and Voluntary Termination 14
E. Participants Who Commence Employment Between Ages 55 and 60 14
F. Cash-Out of Deferred Pension 14
G. Repayment of Cash-Out 14
H. Age and Service Required for a Pension 15
I. Entitlement to Retirement Benefits 15

6. Surviving Spouse Benefits 15

A. Joint & Survivor Annuity 15
B. Preretirement Surviving Spouse Benefits..... 15
C. Marriage Requirements for Surviving Spouse Benefits 16

7. Vesting 16

A. Vested Rights 16
B. Accrued Pension..... 16
C. Conditions under which Vested Benefits will not be paid 17

8. Service Credit 17

A. Determination of Vesting Service 17
B. Determination of Accredited Service for Computation of a Pension..... 18
C. Other Service Recognized for Vesting or Computation of a Pension 19
D. Additional Rules for Accumulation of Service Credit..... 20

9. Effective Date of Retirement and Commencement of Benefit Payments 21

10. Computation of Benefits 22

A. Computation of Annual Pension 22
B. Computation of Pension, Annuities, or Benefits Based Upon Annual Pension 24

(1) Retirement at Age Sixty-Two (62) or Later 24

(2) Early optional Retirement and Retirement in the Discretion of the Company..... 24

(3) Disability Annuity Prior to Attaining Age Sixty-Two (62)..... 25

(4) Joint and Survivor Annuity 26

(5) Preretirement Surviving Spouse Benefits .. 26

(6) Deferred Pension..... 27

(7) Deferred Pension at Age Sixty-Five (65) 27

(8) Deferred Pension Prior to Age Sixty-Five (65) 27

(9) Determination of Present Value of Vested Pension Payable at Age Sixty-Five (65) — Cash-Out 27

11. Limitation of Benefits and Deductions from Benefits 28

A. Maximum Benefits..... 28
B. Minimum Benefits 30

C. Deductions for Pension or Benefits Under Other Pension Plans..... 31
D. Limitation of Deductions 32
E. Transfers 32

12. Payment of Benefits..... 32

A. Manner of Payment of Benefits..... 32
B. Termination of Payments..... 33

13. Assignment or Non-Alienation of Benefits.... 34

14. No Right to Employment 34

15. Trust Fund..... 34

16. Contributions..... 35

A. Payment of Contributions..... 35
B. Funding Policy Procedure and Amount of Contributions 35
C. Payment of Expenses..... 35
D. Restrictions on Recovery by Company of Contributions 36
E. Management Plan Is Non-Contributory ... 36

17. Fiduciaries..... 36

A. Named Fiduciaries..... 36
B. Fiduciary Responsibilities 38
C. General Provisions Concerning Fiduciaries 38

18. Powers and Duties of Plan Administrator..... 39

A. Rules and Decisions..... 39
B. Records and Reports 39

C. Other Plan Administrator Powers and Duties 39

19. Administration 40

A. Restriction on Powers 40
B. Ascertainment of Benefits 41
C. Claims 41
D. Records 41

20. Termination or Modification of the Management Plan 42

A. Right to Terminate or Modify 42
B. Rights Upon Termination 42

21. Miscellaneous 43

A. Merger or Consolidation 43
B. Limitations if Management Plan Terminated Within Ten (10) Years 43
C. Forfeitures 45

22. Top-Heavy Provisions 45

A. Application of Top-Heavy Provisions 45
B. Minimum Benefit for Top-Heavy Year 45
C. Maximum Salary for Benefit Computation 49
D. Vesting 46
E. Preservation of Top-Heavy Rights 46
F. Aggregation Groups 47
G. Special Benefit Limits 47
H. Special Distribution Rule 47

23. Retiree Health Program ("Program") 48

A. Effective Date 48

B. Benefits Provided 48
C. Participants' Contributions 48
D. Funding 48
E. Eligibility and Enrollment 49
F. Limitations and Restrictions 50
G. Termination or Modification 51

Appendix I Retiree Health Program 52

A. Benefits 52
B. Costs 60

Actuarial Tables *61*

The Consolidated Edison Retirement Plan for Management Employees

1. *Introduction*

Effective January 1, 1983, The Consolidated Edison Retirement Plan for Management Employees (the "Management Plan") has been adopted by Consolidated Edison Company of New York, Inc. (the "Company"). The Management Plan establishes the bases upon which certain benefits, including benefits for service prior to January 1, 1983, will be provided to employees of the Company on the management payroll of the Company on or after December 31, 1982, to employees who retired prior to that date as management employees, and to the eligible surviving spouses of such employees. Effective January 1, 1983, the Company has amended The Consolidated Edison Pension and Benefits Plan (the "Weekly Plan"), which has heretofore included as participants the employees to be covered by the Management Plan. The Weekly Plan has been amended so as to avoid duplication of benefits and coverage. The Management Plan and the Weekly Plan, as

amended, make provision for employees who transfer from the management to the weekly payroll, or vice-versa.

The Management Plan is intended to qualify under the requirements of the Internal Revenue Code and to comply with the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), any amendments thereto and regulations thereunder; with the provisions of the Age Discrimination in Employment Act Amendments of 1978, any amendments thereto and regulations thereunder; and any other applicable Federal law and regulations.

2. *Definitions and Guides* to *Construction*

A. *Definitions*

Annuity—A payment made monthly for life of recipient.

Beneficiary—A lawful spouse of a Participant and who is, or may become, eligible for benefits under the Management Plan.

Employee—Any person employed by the Company.

Management Employee—An Employee on the Company's management payroll.

(2) Weekly Employee--An Employee on the Company's weekly payroll.

Participant--An Employee hired on his sixtieth (60th) birthday or earlier, or a former Employee with a vested right, who is eligible for benefits under the Management Plan, or who becomes eligible for benefits under the Management Plan,

Pension—A payment made monthly for life to an eligible Participant.

Plan Year—A twelve month period beginning January 1, 1976 and on each January 1st thereafter.

Annual Basic Straight-Time Compensation—The Employee's regular stated rate of pay in the Employee's last pay period in each calendar year, but shall not include premium payments, overtime payments, payments under deferred compensation, incentive or other Company benefit or compensation plans, or similar payments. In the case of an hourly paid Employee, the Annual Basic Straight-Time Compensation will be determined by multiplying the Employee's hourly rate by the Employee's regular weekly schedule of hours multiplied by fifty-two (52) Annual Basic Straight-Time Compensation shall be determined without any deduction for 'Pre-Tax Contributions' or 'After-Tax Contributions' made by the Employee pursuant to the Con Edison Thrift Savings Plan for Management Employees.

Final Average Salary—The average of Annual Basic Straight-Time Compensation, to the nearest whole dollar, for the sixty (60) consecutive months of Accredited Service out of the last one hundred twenty (120) months of (3) Accredited Service which produce the highest average. For purposes of this definition only, a Break in Service shall be ignored and months of Accredited Service separated by a Break in Service shall be deemed consecutive.

Total Salary—The aggregate of the Annual Basic Straight-Time Compensation, to the nearest whole dollar, of an Employee for his years of Management Service, not to exceed the last thirty (30) years of employment, prior to Normal Retirement Date.

Code—The Internal Revenue Code of 1954, as amended.

Defined Benefit Plan—A "defined benefit plan" as defined in Section 414(j) of the Code which is maintained by the Company for Employees:

Defined Contribution Plan—A "defined contribution plan" as defined in Section 414(i) of the Code which is maintained by the Company for Employees.

Service—Service as an Employee.

Vesting Service—Year of Vesting Service—A Plan Year during which an Employee has completed at least 1000 hours of service prior to Normal Retirement Date, or as provided in paragraph 8 A (1) (b).

Accredited Service—(a) The period of employment for service prior to January 1, 1976 and (b) the aggregate period of employment prior to Normal Retirement Date, within the Benefit Accrual Computation Periods, for service after December 31, 1975. Except if a Cash-Out or an immediate pension is elected, a period between cessation of active employment with the Company by reason of Disability and the earlier of the end of the (4) Disability or the attainment of age sixty-five (65) shall also be included in Accredited Service.

Management Service—(a) Accredited Service as a Management Employee on or after January 1, 1983.

(b) Accredited Service prior to January 1, 1983 by an Employee who was a Management Employee on December 31, 1982.

(c) Accredited Service prior to termination by an Employee whose employment by the Company terminated prior to January 1, 1983 and who was a Management Employee at the time of such termination.

Weekly Service—Accredited Service other than Management Service.

Layoff (or laid off)—As used in the Management Plan, shall mean the separation of an Employee from the active payroll for lack of work or such other reason, in no way the

fault of the Employee, as may be determined by the Company.

(5) Vesting Computation Period—The Plan Year beginning January 1, 1976 and on each January 1st thereafter.

Benefit Accrual Computation Period—The Plan Year beginning January 1, 1976 and on each January 1st thereafter.

Cash-Out—The distribution, prior to Normal Retirement Date at the election of the Participant of the actuarial value of one hundred percent (100%) of his non-forfeitable accrued pension benefits under the Management Plan.

One Year Break in Service—Any Vesting Computation Period in which a Participant has not completed more than 500 hours of service.

Disability—Total and permanent disability which qualifies the Participant to receive Social Security disability benefits.

Hour of Service—Each Employee will be credited with an hour of service for:

(1) (a) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the employer for the performance of duties and as provided for in paragraph 8 C. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and

(b) Each hour for which an Employee is directly or indirectly paid or entitled to payment by (6) the employer for reasons (such as vacation, sickness or disability) other

than for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which payment is made or amounts payable to the Employee become due; and

(c) Each hour for which back pay, irrespective of mitigation of damage, has been either awarded or agreed to by the employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment was made; and

(2) the following equivalencies shall be used for the purpose of crediting hours of service for those Participants for whom hours of service are not maintained:

i. one day of employment equals ten (10) hours of service

ii. one week of employment equals forty five (45) hours of service

iii. one month of employment equals one hundred and ninety (190) hours of service.

For purposes of crediting hours for non-performance of duties, such hours shall be credited in accordance with Department of Labor Regulation 2530. 200 b-2 (c).

(7) Normal Retirement Date—The first day of the month following the Participant's attainment of age 65. A Participant's pension shall be non-forfeitable upon attainment of age 65.

Key Employee—Any employee who at any time during the current or four preceding calendar years is or was:

(a) An officer of the Company with Earnings in excess of 1 1/2 times the dollar limitation for annual additions to a Defined Contribution Plan under Section 415 of the Code.

(b) An employee who is one of the ten Employees owning the largest interest in the Company and who has Earnings in excess of the dollar limitation for annual additions to a Defined Contribution Plan under Section 415 of the Code.

(c) An owner of 5 percent or more of the voting stock of the Company.

(d) An owner of 1 percent or more of the voting stock of the Company with Compensation in excess of $150,000.

Leased Employee—Any person who in accordance with an agreement between the Company and any other person has performed services of a type historically performed by employees in the public utility industry, on a substantially full-time basis for a period of at (8) least one year. A Leased Employee shall be treated as an employee of the Company but shall not be eligible for participation in the Plan.

Top-Heavy Group—Any "required aggregation group" (as defined in Section 22.F) in which more than 60% of the sum of (i) the aggregate account balances under all plans in the group and (ii) the aggregate present value of accrued benefits under all plans in the group is allocated to Key Employees. For the purposes of this definition "present value" shall be determined on basis of an interest rate of 5 1/2% and mortality as set forth in 1971 TPF&C Forecast Mortality, as of the most recent actuarial evaluation date falling within the twelve month period ending on the Determination Date, as defined in Section 22.A.

Top-Heavy Plan—Any Defined Contribution Plan or Defined Benefit Plan under which more than 60% of the sum of (1) its aggregate account balances and (ii) the present value of its aggregate accrued benefits is allocated to Key Employees. For the purposes of this definition

"present value" shall be determined on basis of an interest rate of 5 1/2% and mortality as set forth in 1971 TPF&C Forecast Mortality, as of the most recent actuarial valuation date falling within the twelve month period ending on the Determination Date as defined in Section 22.A.

(9) Social Security Benefit—The estimated amount of annual primary insurance benefit payable at age sixty-five (65) under Title II of the Federal Social Security Act, as determined under reasonable rules uniformly applied in accordance with the terms of the Management Plan, on the basis of such Act as in effect at the time of retirement or other termination, to which a Participant is or would be entitled, even if the Participant does not receive such benefit because of his failure to apply or because he is ineligible by reason of earnings he may be receiving. In determining the Participant's Social Security Benefit in the event of retirement or termination at or after age sixty-two (62), it shall be assumed that the Participant has no further covered earnings after termination of employment. In determining the Participant's Social Security Benefit in the event of retirement or termination prior to age sixty-two (62), it shall be assumed that the Participant continued in service to age sixty-five (65) at his or her Annual Basic Straight-Time Compensation at the termination of the Participant's employment with the Company. If a cost-of-living increase in Social Security benefits has been put into effect within the 12-month period preceding the date of determination and such increase exceeds 3%, it is (10) assumed that the increase is being phased in over 12 months, beginning with the effective date of the increase, at the rate of 1/12th of the increase per month. Actual earnings reported on Form W-2 shall be used for calculating each Participant's Social Security Benefit. For Participants whose actual W-2 earnings are not available the Plan Administrator shall adopt and

provided, however, that any backwards salary scale projection shall utilize a level percentage per year of not less than 6%. All Participants shall be notified of their right to provide their actual salary history from the Social Security, Administration, and of their right to have their benefits adjusted to reflect a Social Security Benefit based on actual salary history. Such notice shall also advise Participants that their Social Security Benefit will be based on salary estimates calculated by the Company, if they fail to provide actual salary history. This notice shall be included in the Summary Plan Description of the Management Plan, and shall also be furnished to each Participant not later than the late of his Severance from Service or notification to the Participant of his benefits.

Projected Retirement Date—For Participants whose age plus Accredited Service total at least seventy-five (75) at date of retirement (11) or termination, the later of:

(a) The first day of the month following actual retirement or termination.

(b) The first day of the month following attainment of age sixty-two (62).

For Participants whose age plus Accredited Service total less than seventy-five (75) at date of retirement or termination, Projected Retirement Date is the first day of the month following attainment of age sixty-five (65).

Projected Service—The total of all Management Service for a Participant assuming he continued in employment with the Company as a Management Employee to Projected Retirement Date.

Severance from Service—The earlier of:

(i) the date on which an Employee quits, is discharged, retires or dies,

(ii) the date 12 months following the first date on which an Employee is absent for any reason other than quit, discharge, retirement or death.

Break in Service—a period of 12 or more consecutive months, commencing on a Participant's date of Severance from Service and ending on the first anniversary of such date, during which the Participant fails to perform an Hour of Service. (12) Upon incurring a Break in Service, a Participant's benefits under this Plan shall be determined using his Accredited Service at the time the Break in Service is incurred.

B. *Guides to Construction*

(1) The masculine gender, where appearing in the Management Plan, shall be deemed to include the feminine gender.

3. *Participation*

A. *Application of the Management Plan*

If the effective date of a Participant's retirement, as determined under paragraph 9, shall be prior to January 1, 1983, the benefits to which the Participant shall be entitled shall be determined under The Consolidated Edison Pension and Benefits Plan as amended through December 31, 1982. The benefits to which all other Participants shall be entitled shall be determined under the Management Plan.

B. *Maximum Age for Participation*

No Employee who begins employment with the Company later than his sixtieth (60th) birthday shall be a Participant in the Management Plan.

4. *Mandatory Retirement*

Any Employee who is exempt from the provisions of The Age Discrimination in Employment Act of 1967, as heretofore and hereafter amended (because he or she is employed in a bona fide executive or a high policy-making position and otherwise satisfies the conditions permitting exemption), may be mandatorily retired from the service of the Company after attaining age 65, and each such Employee's Mandatory Retirement Date shall be his Normal Retirement Date.

Each Employee not subject to the foregoing paragraph who shall attain age 70 on or before December 31, 1985 shall be retired from Service on the last day of the month in which age 70 is attained, and each such Employee's Mandatory Retirement Date shall be the first day of the month following his attainment of age 70.

(13) 5. *Eligibility for a Retirement Pension*

A. *Retirement at Age 62 or Later*

A Participant who shall have completed such years of Accredited Service which when added to his years of age total not less than seventy-five (75), and who shall have attained the age of 62 years, shall, upon filing a written application, be retired hereunder from the service of the Company and be entitled to a pension computed in accordance with paragraph 10 B (1). Such election shall not be revocable on or after the effective date of retirement.

B. *Early Optional Retirement*

A Participant who shall have attained an age which when added to his years of Accredited Service shall total not less than seventy-five (75) shall, upon filing a written application, be retired from the service of the Company and be entitled to a pension computed in accordance with paragraph 10 B (2). Such election shall not be revocable on or after the effective date of retirement.

C. *Retirement or Termination for Disability*

(1) A Participant, prior to having attained age sixty-five (65), whose active employment with the Company ceases because of Disability, shall be eligible for a deferred pension beginning at age sixty-five (65) if the Participant was a Management Employee at the time of such cessation. Such pension will be determined as if such Participant had been continuously employed as a Management Employee for the period from such cessation to the earlier of the end of the Disability or age sixty-five (65) at the Annual Basic Straight-Time Compensation in effect during the last pay period prior to such cessation.

(2) If a Participant was an Employee on December 31, 1982 and becomes disabled such Participant may, if the Company shall so determine, be retired or terminated from the Company. Upon such retirement or termination, the Participant may be eligible for a disability annuity pursuant to paragraph 10 B (3), or a deferred pension (or a Cash-Out of his deferred pension) depending on his age and years of Accredited Service, as hereinafter provided.

(14) D. *Termination of Service in the Discretion of the Company and Voluntary Termination*

A Participant who acquires a vested right to his accrued pension prior to having attained age sixty-five (65), and who terminates voluntarily or whose service is terminated by the Company will be eligible for a pension if his age plus years of Accredited Service shall total not less than seventy-five (75), or a deferred pension (or a Cash-Out of his deferred pension) if his age plus years of Accredited Service shall total less than seventy-five (75).

E. *Participants who Commence Employment Between Ages 55 and 60*

A Participant who commenced employment with the Company on or after his fifty-fifth (55th) birthday but not later than his sixtieth (60th) birthday and who remained in the continuous employ of the Company and attained age sixty-five (65) will be entitled to a pension upon his retirement from the service of the Company.

F. *Cash-Out of Deferred Pension*

A Participant whose age plus years of Accredited Service equal less than seventy-five (75) and who on termination of service with the Company has vested rights, may, in lieu of a deferred pension, Cash-Out the value of his pension payable at the attainment of age sixty-five (65). A Participant who elects a Cash-Out and who is married at the time of his termination of Service must provide his spouse's written consent to the Cash-Out, on a form furnished by the Company, which consent must be witnessed by a Notary Public.

The Employee will be allowed a reasonable period after termination in which to advise the Plan Administrator whether he chooses either to Cash-Out or to take a deferred pension. However, this period will not extend beyond the first day of the second month following the Employee's date of termination.

G. *Repayment of Cash-Out*

A Participant who has Cashed-Out his vested rights and is subsequently reemployed may regain his vested rights for the period of service on which the Cash-Out was based by paying to the trust the full amount of such Cash-Out with interest at the rate of interest used for actuarial valuation of the Management Plan at (15) the time of the Cash-Out, compounded annually from the date of Cash-Out to the date of repayment.

Vested right for any of such prior service will be suspended until the Cash-Out is fully repaid. However, any of the years of Accredited Service following reemployment will be vested.

H. *Age and Service Required for a Pension*

No Participant whose age plus years of Accredited Service equals less than 75 shall be entitled to a Pension under this Plan except for a Participant who retires on his Normal Retirement Date.

I. *Entitlement to Retirement Benefits*

Participants eligible for a pension upon attaining age sixty-five (65), regardless of Years of Vesting Service, shall be one-hundred percent (100%) nonforfeitably vested in their accrued benefits. A Participant shall become one-

hundred percent (100%) nonforfeitably vested in his accrued benefit upon attaining age sixty-five (65).

6. *Surviving Spouse Benefits*

A. *Joint & Survivor Annuity*

Each Employee who retires under the Management Plan shall receive a Pension calculated under Article 10, and upon such retired Employee's death, his surviving spouse, if any, who meets the requirements set forth in Section 6.C. below shall receive an Annuity commencing the first day of the month following the death. The amount of the Annuity shall be calculated under Section 10.B.4. There shall be no reduction in the Employee's Pension to provide the surviving spouse Annuity.

B. *Preretirement Survive Spouse Benefits*

(i) The surviving spouse of an Employee on the active payroll or on leave of absence for any reason whose age together with years of Accredited Service total seventy-five (75) or more, and the surviving spouse of a former Employee who is eligible for an immediate Pension under Section 5D or 5H, shall be entitled to a preretirement survivor Annuity upon the death of the Employee or former Employee before commencement of a Pension. The amount of the preretirement survivor Annuity shall be calculated under Section 10.B.5(i), and the preretirement survivor Annuity shall commence on the first day of the month following the death.

(16) (ii) The surviving spouse of an Employee on the active payroll or on leave of absence for any reason whose age together with years of Accredited Service total less than seventy five (75), and the surviving spouse of a former

Employee who is eligible for a deferred pension under Section 5.D. and whose age at death together with years of Accredited Service total less than seventy five (75), shall receive the preretirement survivor benefit calculated under Section 10.B.5.(ii).

(iii) For purposes of calculating the preretirement surviving spouse benefits provided under Sections 6.B.(i) and (ii) above, there shall be no reduction in the amount of the deceased Employee's Pension which is the basis for such calculation.

C. *Marriage Requirements for Surviving Spouse Benefits*

(a) In order to qualify for a survivor Annuity upon the death of a retired Employee who has commenced to receive a Pension under the Management Plan, a spouse must have been lawfully married to the retired Employee on the date the payment of the Pension commenced and must survive the retired Employee.

(b) In order to qualify for a preretirement survivor benefit under Section B above, a deceased Employee's or former Employee's spouse must have been lawfully married to the deceased Employee on the date of death, and must survive the deceased.

(c) The Plan Administrator may request evidence of marriage from any surviving spouse, and payments of surviving spouse benefits shall not commence until satisfactory evidence is provided by or on behalf of the surviving spouse.

7. *Vesting*

A. *Vested Rights*

A Participant who completes ten (10) or more years of Vesting Service will be entitled to a non-forfeitable right of one-hundred percent (100%) of his accrued pension payable at Normal Retirement Date.

B. *Accrued Pension*

The accrued pension is a pension which is or would be payable at age sixty-five (65), based on the Employee's Final Average Salary, or Total Salary, as the case may be, and years of Management Service as of the date the computation is made.

(17) C. *Conditions Under Which Vested Benefits Will Not Be Paid*

In no event will a Participant receive a deferred monthly pension if:

(a) He dies before retirement and his spouse is not entitled to benefits under paragraph 6, or

(b) He has received a Cash-Out from the Management Plan.

If a Participant entitled to a deferred pension, or a Beneficiary, fails to make application for a deferred pension or a related benefit on or before the date when either the Participant or Beneficiary would otherwise be entitled to the benefit, no payment will commence before application is made.

8. *Service Credit*

A. *Determination of Vesting Service*

Vesting Service shall be determined as follows:

1. (a) *Prior to January 1, 1976*

Within each calendar year the number of months that the Employee is employed by the Company in other than a temporary status will be added and if the total number of months is six (6) or more, the Employee will be credited with one (1) year of Vesting Service. A fraction of a month will be counted as one (1) month.

(b) *After December 31, 1975*

In accordance with the definition of Vesting Service, paragraph 2 A of the Management Plan, or if more favorable to the Participant, one year of Vesting Service if the Participant is employed in continuous employment during any calendar year prior to attaining Normal Retirement Date for six months during the year.

2. The retention or loss of Vesting Service because of Breaks in Service shall be determined in accordance with subsection 8.D.

(18) B. *Determination of Accredited Service for Computation of a Pension*

For Service Prior to January 1, 1976

1.(a) Accredited Service for the computation of pension will be the total of the months and years of service the Employee was continuously in the employ of the Company in other than a temporary status. For the purpose of determining service credit, a fraction of a month will be credited as one (1) month. Each period of Accredited Service will be added and the total of such service will be used in computing the pension.

For Service after December 31, 1975

1.(b) The aggregated period of employment, prior to Normal Retirement Date, to the date of Severance from Service, subject to the Rule of Parity provisions in subsection 8.D. In addition, if an Employee incurs a Severance from Service by reason of a quit, discharge or retirement and subsequently performs an Hour of Service, the period of severance shall not be counted as Accredited Service.

2. Employees who have acquired ten (10) years of Accredited Service shall be credited with all additional years and months of service with the Company prior to Normal Retirement Date regardless of a subsequent break in service. However, no period constituting a break in service will be included in the period of Accredited Service for computation of a pension.

3. If an allowance has been paid under the provisions of the Company's former Pension Plan for Retirement for Age or the Company's former Employees Security Plan (the "plans"), based upon Accredited Service performed prior to August 1, 1975 and such period of Accredited Service is included in the computation of a pension under the Management Plan, the actuarial present value of the pension so computed will be reduced by the total of such allowance payments. The resulting present value, as so reduced, of the pension will be the basis for determining the monthly pension.

(19) 4. The application of the foregoing provisions solely as they pertain to Accredited Service prior to the effective date of the Management Plan shall not be interpreted so as to reduce the years and months of Accredited Service which would have been used in the computation of the Employees's pension under the provisions of the plans.

5. The effect of a Cash-Out of vested rights on Accredited Service will be to deny such credit for prior service until the Cash-Out is fully repaid, as provided in paragraph 5 G.

6. A Participant receiving a pension or annuity under the Management Plan or the plans will, if reemployed after August 1, 1975, continue to receive such pension or annuity payments during the period of employment. Upon subsequent retirement, there will be payable to such participant an addition to his pension or annuity based on the service accredited from the date of reemployment. Pension or annuity payments suspended under the provisions of the plans applicable to employees who were reemployed prior to August 1, 1975 shall continue to be suspended and shall otherwise be subject to the provisions of the plans.

7. Service after Normal Retirement Date shall not be Accredited Service.

C. Other Service Recognized for Vesting or Computation of a Pension

Accredited Service and Vesting Service shall include periods of interruptions in service due to:

1. To the extent required by law, active military, naval, marine or related service of the United States or the State of New York, or leaves of absence granted pursuant to Company policy for World War II defense employment (1941-1946);

2. Absence because of illness under sick leave granted; or

3. Absence under leave granted for any other reason, for time not exceeding a total of six (6) months.

(20) D. *Additional Rules for Accumulation of Service Credit*

For purposes of this subsection D, a "period of severance" means a continuous period of time during which an individual is not on the active payroll of the Company, which period shall commence upon such individual's Severance from Service. The following rules shall govern crediting of Service under this Plan:

(i) For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or his nonforfeitable right to a Pension, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment by the Company and ending on the date a break in service begins, except for the periods of Service which may be disregarded on account of the "rule of parity" described in subsection (iii). The first day of such employment or reemployment is the first day the Employee performs an hour of Service.

(ii) In the case of an individual who is absent from work for maternity or paternity reasons, the period up to the first anniversary of the first day of such absence shall constitute Service for purposes of vesting and eligibility for benefits under the Plan, but shall not constitute Service for accrual or computation of such benefits. If such period of absence for maternity or paternity reasons extends beyond the first anniversary of the first day of such absence, the period up to the second anniversary shall constitute neither Service nor a break in service, and any further absence shall constitute a period of severance and a break in service commencing on such second anniversary.

(iii) In the case of a Participant who has 5 or more consecutive one year breaks in service the following "rule of parity" shall apply:

(i) all Service after such breaks in service will be disregarded for the purpose of vesting any benefits accrued before such breaks in service.

(ii) the Participant's pre-break Service will count in vesting benefits accruing after the break in service, only if either:

(21) (1) such Participant had a vested right to a Pension at the beginning of the break in service; or

(2) upon returning to service the number of consecutive one year breaks in Service is less than the number of years of Service.

Pre-break Service which, under this "rule of parity", is not required to be counted for vesting purposes following a particular break in service, shall not be counted for such purposes following any subsequent break in service.

The foregoing notwithstanding, a Participant shall not lose Vesting Service accrued prior to a break in service if the break in service resulted from layoff or disability (whether or not constituting Disability as defined in Section 2A of the Plan).

9. *Effective Date of Retirement and Commencement of Benefit Payments*

The effective date of a Participant's retirement and the date benefit payments commence shall be the first day of the calendar month next following the effective date of the separation of the Employee from the active payroll, except

that, in the case of an Employee entitled to a deferred pension under Section 5.C. because of Disability, the effective date of retirement shall be such Employee's Normal Retirement Date.

Unless otherwise elected in writing by the Participant, benefit payments shall commence not later than the 60th day after the close of the Plan Year in which the later of the following events occur:

(i) the Participant attains his Normal Retirement Date; or

(ii) the termination of the Participant's service with the Company.

Provided, however, that benefit payments shall commence not later than the following date which is applicable to a Participant:

(22) (1) Distribution to a 5-percent owner (as described in section 416(i) of the Code determined with respect to the Plan Year ending in the calendar year in which such individual attains 70-1/2) must commence no later than the first day of April following the calendar year in which such individual attains age 70-1/2.

(2) Distribution to a Participant other than a 5-percent owner must commence no later than the first day of April following the calendar year in which the later of termination of employment or age 70-1/2 occurs.

10. *Computation of Benefits*

A. *Computation of Annual Pension*

1. For Participants in the Management Plan who are first hired by the Company on or after January 1, 1983, the annual amount of pension will be equal to:

1.833% of the Participant's Final Average Salary for each year of Management Service up to a maximum of 30 years

minus

1.666% of the Participant's Social Security Benefit for each year of Management Service up to a maximum of 30 years

plus

.5% of the Participant's Final Average Salary for each year of Management Service in excess of 30.

2. For (x) Participants in the Management Plan who were employed by the Company on December 31, 1982, and (y) Participants who terminated with vested rights prior to December 31, 1982, are reemployed after that date, and either regain their vested rights pursuant to paragraph 5 G or did not begin to receive a pension hereunder prior to such rehire, the annual amount of pension will be equal to the greater of:

(a) The pension determined in accordance with paragraph 10 A 1. above

(23) (b) The pension determined by computing 2.2% of Total Salary increased by .125% for each calendar month of Management Service in excess of 30 years.

The Annual Basic Straight-Time Compensation for any period of Management Service shall be considered to be not less than such compensation as was applicable to the Employee for the fourteenth (14th) accredited calendar year prior to the calendar year of his retirement, but in no event less than three thousand dollars ($3,000); and for an Employee whose Annual Basic Straight-Time Compensation at the time of retirement is at a rate of three thousand dollars ($3,000) or less, the Annual Basic Straight-Time Compensation for any period of Management Service shall be considered to be not less than an annual amount determined at the rate of his Annual Basic Straight-Time Compensation at the time of retirement.

3. All those Employees retiring during the period July 1, 1980 through June 30, 1983 having then attained age 62 or older, if eligible to receive a benefit determined under paragraph A above, in addition to that benefit, shall receive a benefit in accordance with the following:

(a) Only Management Plan Participants who retire directly from the service of the Company during the period July 1, 1980 to June 30, 1983, and who were Management Employees at the time of such retirement, will be eligible for this benefit.

(b) A Participant who retires at age 64 or older, will receive $41.67 per month from the date of retirement until June 30, 1983.

(c) A Participant who retires at age 62 or 63 will receive $33.34 per month until age 64 or June 30, 1983, if earlier, and thereafter will receive $41.67 per month until June 30, 1983.

(d) A surviving spouse of a Participant eligible for the additional benefit provided under this paragraph 10A 3 will receive, until June 30, 1983, one-half (24) of the additional

benefit that the Participant would have received had he survived.

B. *Computation of Pension, Annuities, or Benefits Based Upon Annual Pension*

The following pensions, annuities or benefits as specified, will be based upon the annual pension determined in accordance with paragraph 10.

The following computations apply only to an Employee who terminates with vested rights but whose age when added to his accredited years of service at termination is equal to seventy-five (75) or more.

1. *Retirement at Age Sixty-Two (62) or Later*

The pension payable to an Employee retiring at age 62 or later will be the amount determined in accordance with paragraph 10 A.

2. *Early Optional Retirement and Retirement in the Discretion of the Company*

This category applies to an Employee who retires prior to age 62. The pension payable to such Employee will be determined as follows:

(a) For Participants in the Management Plan who are first hired by the Company on or after January 1, 1983, the annual amount of pension will be equal to 1.833% of Final Average Salary times Projected Service up to 30 years, multiplied by the ratio of actual Management Service to Projected Service, and further multiplied by the appropriate discount factor from column I of Table A,

minus

1.666% of Social Security Benefit times Projected Service up to 30 years, multiplied by the ratio of actual Management Service to Projected Service, and further multi-

plied by the appropriate discount factor from column II of Table A,

plus

(25) .5% of Final Average Salary times the years, if any, of Projected Service in excess of 30, multiplied by the ratio of actual Management Service to Projected Service, and further multiplied by the appropriate discount factor from column I of Table A.

(b) For (x) Participants in the Management Plan who were employed by the Company on December 31, 1982, and (y) Participants who terminated with vested rights prior to December 31, 1982, are reemployed after that date, and either regain their vested rights pursuant to paragraph 5 G or did not begin to receive a pension prior to such rehire, the annual amount of pension will equal the greater of:

(i) The amount determined in accordance with paragraph 10 B 2. (a) above.

(ii) 2.2% of Total Salary increased by .125% for each calendar month of Management Service in excess of 30 years, and multiplied by the appropriate discount factor from column I of Table A.

The Annual Basic Straight-Time Compensation for any period of Accredited Service shall be considered to be not less than such compensation as was applicable to the Employee for the fourteenth (14th) accredited calendar year prior to the calendar year of his retirement, but in no event less than three thousand dollars ($3,000); and for an Employee whose Annual Basic Straight-Time Compensation at the time of retirement is at a rate of three thousand dollars ($3,000) or less, the Annual Basic Straight-Time Compensation for any period of Accredited Service shall be considered to be not less than an annual amount deter-

mined at the rate of his Basic Straight-Time Compensation at the time of retirement.

3. *Disability Annuity Prior to Attaining Age Sixty-Two (62)*

The annuity payable to a Participant described in paragraph 5 C 2. will be equal to the pension determined in accordance with paragraph 10 B 2. (b) (ii) plus an amount which when added to such pension will yield (26) an annuity in an amount calculated by reducing the pension determined in accordance with paragraph 10 A 2. (b) by 0.125% for each calendar month (1-1/2% per year) between the Participant's projected date of retirement at age sixty-two (62) and the date of his retirement for disability.

4. *Joint & Survivor Annuity*

A surviving spouse eligible under section 6.A. to receive an Annuity upon surviving a deceased retired Employee, shall receive an Annuity equal to fifty percent (50%) of the Pension which the deceased Employee had been receiving.

5. *Preretirement Surviving Spouse Benefits*

(i) A surviving spouse eligible under section 6.B (i) to receive an Annuity shall receive an Annuity equal to fifty percent (50%) of the Pension calculated under Table A which the deceased Employee would have begun receiving if such Employee had terminated employment on the date of death and had applied for a Pension commencing on the first day of the month following the death.

(ii) A surviving spouse eligible under Section 6.B. (ii) to receive a preretirement survivor benefit shall receive an immediate lump sum payment equal to fifty percent (50%)

of the Cash-Out the deceased would have received if he had terminated on the date of death and elected a Cash-Out provided, however, that in no event shall the interest rate utilized in determining such lump sum amount exceed the rate utilized by the Pension Benefit Guaranty Corporation for valuing a lump-sum distribution upon plan termination. If the limp sum amount exceeds $3,500, the surviving spouse must consent to the lump sum payment in writing on a form provided by the Company. If the surviving spouse does not consent, he or she shall receive an immediate Annuity equal to fifty percent (50%) of the present Annuity value of the deceased's vested accrued Pension at age 65 calculated under Table A. Payment of such Annuity shall commence on the first day of the month following the death.

(27) *Deferred Pension*

An Employee, upon termination of employment, may elect to have his pension as determined in accordance with paragraph 10 A deferred to a later date but not beyond age sixty-five (65). Upon application for payment of the deferred pension, the computation of the pension payable in accordance with paragraph 10 B (1) or (2) will be based on the Employee's age on the date of retirement following such application.

The following computations apply only to an Employee who terminates with vested rights but whose age at termination when added to his accredited years of service at termination is equal *to less than seventy five* (75).

7. *Deferred Pension at Age Sixty-Five (65)*

An Employee who elects to defer his pension to age sixty-five (65) will be paid the pension determined in

accordance with paragraph 10 B 2., except that Table A factors will not apply.

8. *Deferred Pension Prior to Age Sixty-Five (65)*

An Employee who elects to take his deferred pension on or after the date when his age plus Accredited Service is equal to seventy-five (75) will have the pension determined in accordance with paragraph 10 B 2.

9. *Determination of Present Value of Vested Pension Payable at Age Sixty-Five (65)—Cash-Out*

The Cash-Out is a lump-sum payment representing the present value of the deferred pension payable to the Employee at Normal Retirement Date and will be computed by multiplying the pension determined in accordance with paragraph 10 B 7. by the factor in Table B corresponding to the age of the Employee on the first day of the month following termination; provided, however, that in no event shall the interest rate utilized in determining the factors in Table B exceed the rate utilized by the (28) Pension Benefit Guaranty Corporation for valuing a lump-sum distribution upon plan termination.

11. *Limitation of Benefits and Deductions From Benefits*

A. *Maximum Benefits*

The maximum annual pension payable under the Plan and other Company defined benefit plans shall be the smaller of 1 and 2:

1. an amount which, when added to fifty percent (50%) of the Primary Insurance Amount payable to an Employee under the Social Security Act, equals eighty percent (80%) of the Employee's highest Annual Basic Straight-Time

Compensation during his years of Accredited Service. For purposes of this paragraph, the Primary Insurance Amount shall be determined under the provisions of the Social Security Act in effect on the date of the Employee's retirement or termination.

2. the lesser of:

(a) $90,000 or

(b) 100% of the Participant's average compensation for the three consecutive years that produces the highest average.

If the annual benefit commences when the Participant has less than 10 years of service with the Company the maximum benefit payable is reduced by one-tenth for each year of service less than ten.

Annual benefits commencing before age 62 will be actuarially reduced to the equivalent of a $90,000 benefit beginning at age 62.

Annual benefits commencing before age 55 will be actuarially reduced to the greater of:

(a) the actuarial equivalent of a $75,000 benefit beginning at age 55, or

(b) the actuarial equivalent of a $90,000 benefit beginning at age 62.

If the annual benefit commences after age 65, the benefit may not exceed the actuarial equivalent of a $90,000 annual benefit beginning at age 65.

(29) Annual benefit shall mean a benefit payable annually in the form of a straight life annuity with no ancillary benefits. Benefits payable in any other form will be adjusted to the actuarial equivalent of a straight life annuity.

Actuarial equivalent shall be determined by using an interest rate assumption equal to the greater of 5% or the rate specified in the Plan. For benefits payable after age 65, the word "lesser" shall be substituted for the word "greater" in the preceding sentence.

For purposes of the limitations of this section, compensation shall mean all compensation of the Participant from the Company for the limitation year.

The limitations of this section will be deemed satisfied if the annual benefit payable to a Participant is not more than $1,000 multiplied by the Participant's years of service with the Company (not exceeding 10), and the Participant never participated in a defined contribution plan maintained by the Company.

Effective on January 1, 1986, and on each January 1 thereafter, the $90,000 limitation will be automatically adjusted by the Commissioner of Internal Revenue. The new limitation will apply to limitation years ending on or after that date.

Alternative Maximum Benefit

The annual retirement income payments under the Plan shall be treated as not exceeding the limitations above in the case of an Employee who was an active Participant before October 2, 1973 if such annual retirement income (calculated on the basis of the Straight Life Annuity form) neither exceeds:

(a) 100% of his annual rate of compensation on the earlier of October 2, 1973 or his termination date, nor

(b) 100% of the annual benefit which would have been payable to such Participant on retirement assuming

(i) all the terms and conditions of the Plan on the earlier of October 2, 1973 or his termination date had continued unchanged, and

(30) (ii) his compensation on October 2, 1973 continued to his termination date.

In the case of an Employee who ceased employment before October 1, 1972 and who becomes entitled to benefit payments beginning on or after August 1, 1975, the annual benefit under this paragraph shall not be greater than the deferred vested benefit to which he was entitled as of his termination date.

3. If the Participant is, or was, covered under a defined benefit plan and a defined contribution plan maintained by the company the sum of the Participant's defined benefit plan fraction and defined contribution plan fraction may not exceed 1.0 in any limitation year.

The defined benefit plan fraction is a fraction, the numerator of which is the sum of the Participant's projected annual benefits under all defined benefit plans (whether or not terminated) maintained by the Company and the denominator of which is the lesser of (i) 1.25 times the dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code in effect for the limitation year, or (ii) 1.4 times the Participant's average compensation for the three consecutive years that produces the highest average.

The defined contribution plan fraction is a fraction, the numerator of which is the sum of the annual additions to the participant's account under all defined contribution plans maintained by the Company (whether or not terminated) for the current and all prior limitation years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the company: (i) 1.25 times the dollar limitation in effect under Section 415(c)(1)(A) of the Code for such year, or (ii) 1.4 times the amount which may be taken into account under Section 415(c)(1)(B) of the Code.

Projected annual benefit means the annual benefit to which the Participant would be entitled under the terms of the Plan, if the Participant continued employment until normal retirement age.

B. *Minimum Benefits*

1. The minimum benefits payable to a Participant receiving a pension first payable on or after attaining age sixty-two (62), (31) or a disability annuity after having attained age sixty-five (65), subject to other provisions of the Management Plan, shall be the greater of:

(a) $4.40 per month for each year, up to twenty-five (25) years, of Management Service.

(b) $110 per month for an Employee having twenty-five (25) years of Management Service, plus $5.50 per month for each additional year of Management Service up to thirty (30) years;

(c) $137.50 per month for an Employee with thirty (30) or more years of Management Service.

2. The minimum disability annuity payable under the Management Plan, subject to other provisions of the Man-

agement Plan shall be $55 per month. The benefit payable to a Participant, either

(a) in accordance with the Management Plan's optional early retirement provisions, or

(b) in accordance with the Management Plan's Normal or Mandatory Retirement Date, shall not be less than the greatest early retirement income amount which may be calculated under the optional early retirement provision as of the last day of any computation period which ended before his retirement date.

C. *Deductions for Pension or Benefits Under Other Pension Plans*

There shall be deducted from any benefit for which an Employee may be eligible under the Management Plan the amount of each and every payment or benefit received by such Employee by reason of his retirement on account of service with any other employer where years of service with such other employer are included in years of Accredited Service under the Management Plan, provided that pension payments by Federal, State or municipal governments for service under those governments shall not be deducted hereunder.

(32) D. *Limitation of Deductions*

The deductions authorized by paragraph 11 C shall not be applied or made in such a manner as to reduce below ten dollars ($10.00) in any month the net amount payable to any Employee receiving a benefit under the Management Plan, nor shall any net benefit amount payable be reduced below ten dollars ($10.00) in any month.

E. *Transfers*

A Participant whose Accredited Service consists of both Weekly Service and Management Service and who is eligible for a benefit under the Management Plan shall in any event be entitled to a benefit under the Management Plan which is not less than the benefit computed under paragraph 10A (the "Basic Benefit").

If such Participant was a Management Employee at the time of termination of the Participant's employment with the Company, the Participant shall be entitled to the greater of

1. the Basic Benefit, or

2. the benefit which would be payable under the Management Plan if all of the Participant's Accredited Service had been Management Service, reduced by the amount of any benefit to which the Participant shall be entitled under the Weekly Plan.

12. *Payment of Benefits*

A. *Manner of Payment of Benefits*

(1) All benefits provided by the Management Plan shall be determined on an annual basis and payable, upon application, in the following manner:

(i) in the case of pensions, annuities and surviving spouse benefits, monthly payments equal to one-twelfth (1/12th) of the annual amount;

(ii) in the case of a Cash-Out, there will be a single payment.

Payments in the case of disability may begin, in the discretion of the Company, earlier than the effective date of retirement.

(33) No benefit payable under the Management Plan shall be reduced after the commencement of payments except to correct an error in the determination of the benefits or if required by ERISA or governmental authority.

(2) Effective January 1, 1981, Participants who retired from service of the Company prior to January 1, 1978 and are receiving payments under paragraph A (1) (i) above shall have their payments increased in accordance with the following:

Year Retired	*Increase In Monthly Payment*
Prior to 1958	10%
1958 - 1965	8%
1966 - 1971	6%
1972 - 1975	4%
1976 - 1977	2%

Payments to widows and surviving spouses shall be increased, in accordance with the above schedule, based upon the year in which the deceased Participant retired.

No monthly payment shall be increased by less than ten ($10.00).

(3) Effective January 1, 1984, Participants who retired prior to January 1, 1984, and surviving spouses of Participants who retired or died prior to January 1, 1984, and who receive payments under paragraph A(1) (i) above, shall have their monthly payments, as such monthly payments may have been adjusted pursuant to paragraph A(2) above,

increased by a percentage which shall equal one percent times the difference between 1984 and the earlier of the year in which the Participant retired or died, provided that no monthly payment shall be increased by less than ten dollars ($10.00).

B. *Termination of Payments*

Payments to a Participant or to a Beneficiary shall terminate on the last day of the month in which the Participant or Beneficiary dies except that payments of a surviving spouse benefit shall terminate upon remarriage.

(34) 13. *Assignment or Non-Alienation of Benefits*

Except as provided below, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, change, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Management Plan except for a transfer pursuant to a "qualified domestic relations order" within the meaning of Section 414 (p) of the Code. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The trust fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagement, or torts of any person entitled to benefits hereunder. The Plan Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

After a benefit is in pay status, a Participant receiving such benefit may make a voluntary and revocable assignment (not to exceed ten percent (10%) of any benefit payment) provided the assignment is not for the purpose of defraying administrative costs.

14. *No Right to Employment*

The Management Plan shall not be construed to give any Employee the right to be retained in the service of the Company or the right to be reemployed after termination or retirement.

15. *Trust Fund*

All contributions made by the Company under the Management Plan shall be paid to the trustee or trustees, who shall be designated by the Company, and deposited in a trust fund or funds. In accordance with paragraph 19 B, all assets of the trust funds, including investment income, shall be retained for the exclusive benefit of Participants and Beneficiaries, shall be used to pay benefits to such persons or to pay administrative expenses to the extent not paid by the Company, and shall not revert to or inure to the benefit of the Company prior to the satisfaction of all such benefits.

(35) Payment by the trust in good faith to one who claims to be entitled to payment of a benefit hereunder shall discharge the trust from any further liability therefor to any other claimant.

In the discretion of the Company, the assets of the aforementioned trust fund or funds may be held by a single trustee, together and commingled with the assets of the trust fund or funds provided for under the Weekly Plan, provided that the beneficial interest of each trust fund in the commingled assets shall be separately accounted for and

the beneficial interest of the trust fund or funds under the Management Plan shall be applied solely in accordance with the Management Plan and shall not be available to provide benefits under the Weekly Plan, or for any other purpose. Expenses and taxes, to the extent paid from the commingled trust assets, shall be equitably divided between the trust fund or funds under the Management Plan and the trust fund or funds under the Weekly Plan.

The Named Fiduciaries of the Management Plan are hereby authorized to take such action as may be necessary to cause the respective beneficial interests properly allocable to the Weekly Plan and to the Management Plan, in the assets of the trust fund held pursuant to The Consolidated Edison Pension and Benefits Plan on December 31, 1982, to be determined and thenceforth accounted for as two separate trust funds.

16. *Contributions*

A. *Payment of Contributions*

The contributions by the Company shall be made at such times as may be decided upon by the Company.

B. *Funding Policy Procedure and Amount of Contributions.*

In accordance with the funding policy established by the Company upon recommendation by the Named Fiduciaries based upon the advice of an enrolled actuary, the Company from time to time shall make contributions, determined on an annual basis as a percentage of straight-time annual payroll for Management Employees, in such amounts as it shall deem necessary to carry out the objectives of the Management Plan, but in any event the contributions shall: (1) conform to the funding standards of Section 302 of ERISA; and (2) not be greater than the maximum amount

deductible for Federal income tax purposes during the year for which the contribution is made.

(36) C. *Payment of Expenses*

All expenses of the Management Plan shall be paid by the Company, except that plan termination insurance premiums, trustees' fees and expenses to the extent not paid by the Company, counsel fees and expenses, investment expenses (including brokerage costs, transfer taxes, shipping expenses, and charges of correspondent banks of the trustee) and any Federal, State or local taxes which may be assessed or levied against the trust fund or funds or which any trustee thereof is required to pay shall be charged to the trust fund or funds.

D. *Restrictions on Recovery by Company of Contributions*

Except as provided in paragraphs 20.B. and 23.D., under no circumstances shall amounts of money or other things of value contributed by the Company to the trust fund be recoverable by the Company from the trustee or from any Participant or Beneficiary, or be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and Beneficiaries of the Management Plan; provided, however, that if a contribution is made by the Company by mistake of fact, the contribution shall be returned to the Company within one (1) year after the payment of the contribution, or if the Management Plan or the trust (or trusts) fails to qualify under Section's 401 and 501 of the Internal Revenue Code of 1954, or (any contribution being conditioned on its deductibility under Section 404 of the Internal Revenue Code of 1954) if the deduction of any part of any contribution is disallowed, the contribution shall be returned to the Company within one (1) year after the date of denial of qualification of the Management Plan or

trust (or trusts) or within one (1) year after the disallowance of the deduction.

E. *Management Plan is Non-Contributory*

No contributions by Employees shall be required hereunder.

17. *Fiduciaries*

A. *Named Fiduciaries*

Persons from time to time occupying the following offices of the Company are hereby designated as Named Fiduciaries and shall have authority jointly to control and manage the operation and administration of the (37) Management Plan (including the appointment of the Plan Administrator): Chief Executive Officer, Chief Financial Officer, and Chief Accounting Officer. The Company may designate other persons who, upon acceptance of such designation, shall serve as Named Fiduciaries either instead of or in addition to those named above. Any such designation and acceptance shall be in writing and retained by the Plan Administrator.

2. The Named Fiduciaries may allocate fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) among Named Fiduciaries and may designate persons other than Named Fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) under the Management Plan, in accordance with the following procedure:

The Chief Executive Officer of the Company shall in writing allocate fiduciary responsibilities among the Named Fiduciaries, and the acceptance of such responsibilities by the Named Fiduciaries shall be in writing. Any

designation by a Named Fiduciary of persons other than Named Fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities as defined in ERISA) shall be in writing, a copy of which shall be delivered to the designee, and shall specify the fiduciary responsibilities to be carried out by the designee. Written notice of any such designation shall be given to all other Named Fiduciaries by the Named Fiduciary who makes the designation. Any such allocations and acceptances and designations, shall be retained by the Plan Administrator.

3. A Named Fiduciary, or a fiduciary designated by a Named Fiduciary pursuant to the procedure set forth in paragraph 17 A 2., may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the Management Plan.

4. A person who is a Named Fiduciary with respect to control or management of the assets of the Management Plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of the Management Plan.

5. A majority of the Named Fiduciaries may jointly, with the prior approval of the Board of Trustees of the Company direct any trustee appointed pursuant to paragraph 15 to invest all or any part of the trust fund held by such trustee in insurance policies and contracts, including group annuity contracts, and in tax-exempt group trusts, and from time to time to liquidate any such investment in whole or in part.

B. *Fiduciary Responsibilities*

The Named Fiduciaries, and all other persons having fiduciary responsibilities under the law, shall discharge their duties with respect to the Management Plan in

accordance with the law, and solely in the interest of the Participants and Beneficiaries and

1. for the exclusive purpose of:

(a) providing benefits to Participants and their Beneficiaries; and

(b) defraying reasonable expenses of administering the Management Plan;

2. with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

3. by diversifying the investments of the Management Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

4. in accordance with the documents and instruments governing the Management Plan insofar as such documents and instruments are consistent with the law.

C. *General Provisions Concerning Fiduciaries*

1. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Management Plan (including service both as trustee and administrator).

2. Responsibilities for the operation and administration of, the Management Plan may be (39) allocated in accordance with the following procedure:

The Chief Executive Officer of the Company shall allocate responsibilities for operation and administration of the Management Plan, and shall notify all Named Fiduciaries of any such allocation. Any such allocation shall be in writing, a copy of which shall be delivered to the person to whom the responsibilities are allocated, and shall be retained by the Plan Administrator.

18. *Powers and Duties of Plan Administrator*

A. *Rules and Decisions*

The Plan Administrator may adopt such rules as he deems necessary, desirable, or appropriate. All rules and decisions of the Plan Administrator shall be uniform and consistent as to all participants and beneficiaries in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant or Beneficiary, the Company, the legal counsel of the Company, the enrolled actuary, any trustee of the trusts, or the independent qualified public accountant.

B. *Records and Reports*

The Plan Administrator shall exercise such authority and responsibility, and perform such duties, as may be required in order to comply with ERISA and governmental regulations issued thereunder relating to records of Participants' service, accrued benefits, and benefits which are nonforfeitable under the Management Plan; notifications to participants, annual registration with the Internal Revenue Service; annual reports to the Department of Labor; and reports to the Pension Benefit Guaranty Corporation.

C. *Other Plan Administrator Powers and Duties*

The Plan Administrator shall have such other duties and powers as may be necessary to discharge his duties hereunder, including but not by way of limitation, the following:

1. to decide all claims and questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder and to construe and interpret the Management Plan or the plans as may be necessary in connection therewith;

(40) 2. to prescribe procedures to be followed by Participants or Beneficiaries filing applications for benefits;

3. to prepare and distribute, in such manner as he determines to be appropriate, information explaining the Management Plan;

4. to receive from the Company and from Participants such information as shall be necessary for the proper administration of the Management Plan;

5. to furnish the Company, upon request, such annual reports with respect to the administration of the Management Plan as are reasonable and appropriate;

6. to receive and review the periodic valuation of the Management Plan made by the enrolled actuary;

7. to receive, review and keep on file (as he deems convenient or proper) reports of the financial condition, and of the receipts and disbursements, of the trust fund from the trustee or trustees;

8. to appoint or employ individuals to assist in the administration of the Management Plan and to perform the spe-

cific operational and administrative duties and functions necessary to plan administration;

9. to receive service of legal process, as agent for the Management Plan.

The Plan Administrator shall have no power to add to, subtract from or modify any of the terms of the Management Plan, or to change or add to any benefits provided by the Management Plan, or to waive or fail to apply any requirements of eligibility for a pension under the Management Plan.

19. *Administration*

A. *Restriction on Powers*

No rule or regulation under the Management Plan shall be made and no action under its provision shall be taken which, with respect to contributions or benefits, or in any other respect, discriminates in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

B. *Ascertainment of Benefits*

It shall be the duty of the Plan Administrator to examine into the facts relating to each Employee and determine his rights under the Management Plan and the amount and extent of the benefit which shall be payable to him or his spouse and the dates such benefit shall commence and cease. Such determination, if made in conformance with the provisions of the Management Plan, shall be final and binding upon such Employee and Employee's spouse.

In making such determination, the Plan Administrator shall follow the provisions of the Management Plan and

shall not pay or cause to be paid any benefit, either during the existence or upon the discontinuance of the Management Plan, which would cause any part of the trust fund or funds to be used for or diverted to purposes other than for the exclusive benefit of the Employees of the Company or their spouses pursuant to the provisions of the Management Plan at any time prior to the satisfaction of all liabilities with respect thereto under the Management Plan.

C. *Claims*

1. When any claim for benefits by a Participant or a Beneficiary is denied, the claimant shall be notified in writing sent by certified mail of the specific reasons for the denial, in a manner calculated to be understood by the claimant.

2. If the claim for benefits of a Participant or Beneficiary is denied, the claimant shall have the right to a full and fair review of the decision denying such benefits, provided that the request for review, which shall be in writing and addressed to the Plan Administrator, shall be made within ninety (90) days after the claimant receives notice of the denial of benefits.

D. *Records*

The Plan Administrator shall maintain or cause to be maintained accounts showing the fiscal transactions of the Management Plan, and shall cause to be kept, in convenient form, such data as may be necessary for actuarial valuations under the Management Plan and such (42) other matters and records as may be required to comply with ERISA.

20. *Termination or Modification of the Management Plan*

A. *Right to Terminate or Modify*

The Company expects to continue the Management Plan indefinitely and to make contributions to the trust fund or funds under the Management Plan to meet the costs of all benefits provided hereunder, as a current charge upon operating expenses. The Company, however, except as it may have otherwise expressly agreed, reserves the right in its absolute discretion at any time and from time to time, to amend, modify or terminate in whole or in part the Management Plan and the contributions thereunder. No such amendment, modification or termination, however, shall vest in the Company directly or indirectly any interest, ownership or control in the trust fund, except to the extent of any balance remaining after satisfaction of all liabilities under the Management Plan. No such amendment or modification shall retroactively affect adversely Employees' benefits under the Management Plan.

B. *Rights Upon Termination*

In the event of termination of the Management Plan, or partial termination of the Management Plan, each Participant's interest is nonforfeitable and to the extent funded, assets shall be allocated among Beneficiaries in the following levels of priorities in accordance with the provisions of ERISA:

1. Equally among individuals in the following two subcategories:

(a) in the case of benefits in pay status three (3) years prior to termination (at the lowest pay level in that period and at the lowest benefit level under the Management Plan during the five (5) years prior to termination); and

(b) in the case of benefits which would have been in pay status three (3) years prior to termination had the Partici-

pant been retired (and had his benefits commenced then, at the lowest benefit level under the Management Plan during the five (5) years prior to termination).

(43) 2. All other benefits up to the insurance limitations guaranteed by the Pension Benefit Guaranty Corporation.

3. All other (meaning uninsured) vested benefits, and

4. All other benefits under the Management Plan; provided that, upon termination, the Management Plan may provide subclasses and categories within the above levels of priorities; provided, further, that if, following termination of the trust fund or funds and after satisfaction of all liabilities with respect to Employees, retired Employees and joint annuitants under the Management Plan, there is any balance remaining, the trustee or trustees shall dispose of such balance in such manner as the Company may direct, including refund to the Company.

21. *Miscellaneous*

A. *Merger or Consolidation*

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant in the Management Plan shall (if, the Management Plan is terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Management Plan had then terminated).

B. *Limitations if Management Plan Terminated Within Ten (10) Years*

If the Management Plan is terminated or if the contributions required by paragraph 16 hereof are not made at any time prior to December 31, 1992, the amount of the Trust Fund to be used for the benefit of any Employee who is on the list of the twenty-five (25) highest paid Employees of the Company as of January 1, 1983, filed with the Internal Revenue Service, whose anticipated pension or retirement allowance exceeds Fifteen Hundred Dollars ($1,500.00) per annum shall not exceed the amount that would have been applied with respect to such Employee had all the provisions of the Management Plan in effect on January 1, 1983 been continued in effect without change up to the date of said termination or failure to make contributions, but not exceeding the larger of the following amounts:

(44) (i) $20,000;

(ii) an amount equal to twenty percent (20%) of the first $50,000 of the Employee's annual salary multiplied by the number of full years after January 1, 1983 for which the contributions required under paragraph 16 hereof have been made;

(iii) in the case of an Employee who is a substantial owner, as defined in Section 4022(b)(5) of ERISA, a dollar amount which equals the present value of the benefit guaranteed for such Employee under Section 4022 of ERISA, or, if the Plan has not terminated, the present value of the benefit that would be guaranteed if the Plan terminated on the date the benefit commences, determined in accordance with regulations of the Pension Benefit Guaranty Corporation;

(iv) in the case of an Employee other than a substantial owner, as defined in Section 4022(b) (5) of ERISA, a dollar amount which equals the present value of the maximum

benefit described in Section 4022(b) (3) (B) of ERISA (determined on the date the Plan terminates or on the date benefits commence, whichever is earlier and determined in accordance with regulations of the Pension Benefit Guaranty Corporation without regard to any other limitations in Section 4022 of ERISA); or

(v) such larger amount as may be permissible under relevant provisions of the United States Internal Revenue Code and the Regulations thereunder at the time in force.

Any excess amounts arising by application of this paragraph shall be used and applied equitably to or on account of the other Management Employees of the Company. This paragraph shall not be construed to restrict the current payment of benefits under the Management Plan while the Management Plan is in full (45) effect and either the full contributions required under paragraph 16 hereof have been made or its full current costs have been met.

If at the end of the first ten (10) years the full current costs are not met, the restrictions will continue to apply until the full current costs are funded for the first time.

C. *Forfeitures*

Any forfeitures arising under the Management Plan shall be used to reduce the Company's contribution.

22. *Top-Heavy Provisions*

A. *Application of Top-Heavy Provisions*

For any calendar year beginning on or after January 1, 1984 in which the Plan shall, on the last day of such calendar year ("Determination Date"), be either (i) a Top-

Heavy Plan or (ii) a part of a "required aggregation group" (as defined in Section 22F) that is a Top-Heavy Group and not also a part of a "permissive aggregation group" (as defined in Section 22F) that is not a Top-Heavy Group, the provisions of this Section 22 shall apply, notwithstanding any other conflicting provisions of the Plan.

B. *Minimum Benefit for Top-Heavy Year*

For each calendar year for which this Section 22 is applicable, each Participant, who is employed by the Company on the last day of such year and who is not a Key Employee, shall accrue a Minimum Benefit for Top-Heavy Year equal to two percent (2%) of his Final Average Salary for each year of Management Service beginning on or after January 1, 1984 in which the Management Plan is Top-Heavy, provided, however, that the maximum aggregate Minimum Benefit for Top-Heavy Year accrued by such Participant with respect to all calendar years for which this Section 22 is applicable, shall not exceed twenty percent (20%) of his Final Average Salary. The foregoing Minimum Benefit for Top-Heavy Year shall be calculated on the basis of an annuity payable for the life of the Participant commencing on his Normal Retirement Date.

C. *Maximum Salary for Benefit Computation*

For any calendar year for which this Section 22 is applicable, only the first $200,000 (or such larger amount as the Secretary of the Treasury or his delegate (46) may prescribe) of a Participant's Salary shall be taken into account in determining Final Average Salary for purposes of Section 22.B.

D. *Vesting*

For any calendar year for which this Section 22 is applicable, each Participant, who is employed by the Company on the last day of such year, shall accrue nonforfeitable rights to his accrued benefit payable at Normal Retirement Date in accordance with the following schedule:

Years of Vesting Service	*Nonforfeitable Percentage*
Fewer than 2	0
2	20
3	40
4	60
5	80
6	100

For purposes of this section, Years of Vesting Service shall include all Plan Years, beginning on or after January 1, 1984, in which Section 22 was not applicable and which preceded the last plan year in which this Section 22 was applicable. In addition, the accrued pension payable at Normal Retirement Date to which the nonforfeitable percentage shall be applied, shall be the full amount of such Participant's benefits accrued to the last day of the last calendar year to which this Section 22 was applicable.

E. *Preservation of Top-Heavy Rights*

All other provisions of the plan shall again become operative and shall govern the rights of Participants under the Plan which arise or accrue after the last day of the last calendar year in which this Section 22 is applicable. However, each Participant shall retain the full nonforfeitable percentage of his accrued benefit earned under Section 22.D up to the last day in which Section 22 was applicable,

and all future benefit accruals and vesting credit shall be added thereto. In addition, any Participant having five or more Years of Service shall have the right to elect to continue accruing his nonforfeitable percentage of his accrued benefit under section 22.D., such election to be made in writing not more than sixty (60) days after the later of notice to the Participant of his election right or the effective date of reversion to non-"Top-Heavy" rules.

(47) F. *Aggregation Groups*

(a) Notwithstanding anything to the contrary herein, this Plan shall not be a Top-Heavy Plan if it is part of either a "required aggregation group" or a "permissive aggregation group" that is not a Top-Heavy Group.

(b) The "required aggregation group" consists of:

(i) each Defined Contribution Plan or Defined Benefit Plan in which at least one Key Employee participates; and

(ii) each other Defined Contribution Plan or Defined Benefit Plan which enables a plan referred to in the preceding subparagraph (i) to meet the nondiscrimination requirements of Section 401(a)(4) or 410 of the Code.

(c) A "Permissive aggregation group" consists of the plans included in the "required aggregation group" plus any one or more other Defined Contribution Plans or Defined Benefit Plans which, when considered as a group with the "required aggregation group", would continue to meet the nondiscrimination requirements of Section 401(a)(4) and 410 of the Code.

G. *Special Benefit Limits*

For any calendar year for which this Article 22 is applicable the definitions of "Defined Benefit Plan Fraction" and "Defined Contribution Plan Fraction" in Section 11 A.3 shall be modified in each case by substituting "1.0" for "1.25".

H. *Special Distribution Rule*

In the event this Section 22 becomes applicable for any calendar year, the Pension of a Participant who is a Key Employee shall, whether or not such Participant has retired, begin to be paid to such Participant or his Beneficiary or Beneficiaries not later than April 1 of the calendar year following the calendar year in which such Participant attains age 70 1/2. The Pension of a Participant who is not a Key Employee shall begin to be paid to such Participant or his Beneficiary or Beneficiaries not later than April 1 of the calendar year in which the later of the Participant's Retirement or age 70 1/2 occurs.

(48) 23. *Retiree Health Program ("Program")*

A. *Effective Date*

This Section shall become effective on January 1, 1986.

B. *Benefits Provided*

Appendix I, Part A to the Management Plan specifies the benefits to be provided under this Section to eligible participants. The company or companies selected by the Plan Administrator to provide medical/hospital benefits and/or to administer medical/hospital claims and benefit payments and provide prescription drugs and/or to administer prescription benefits shall have final authority to decide all

claims and the amount of benefit payments under provisions of Appendix I, Part A.

C. *Participants' Contributions*

Appendix I, Part B sets forth the monthly contribution for each covered person for medical/hospital benefits coverage, which is required to be paid by a participating retired Employee or surviving spouse. Participants' contributions shall be deducted monthly from their Pension or Annuity payments, unless another form of payment is approved by the Plan Administrator.

Participants need not contribute toward prescription drug benefits but are required to make a co-payment for each prescription or refill as set forth in Appendix I, Part B.

D. *Funding*

The cost of the Program set forth in this Section and in Appendix I shall be funded by the contributions of participants and of the Company through the Trust Fund described in Section 15. All such contributions may be commingled with Pension- and Annuity-related assets for investment and custody purposes, but all Program contributions and earnings thereon, if any, (49) together with all disbursements under the Program, shall be recorded and accounted for in one or more separate accounts relating solely to this Program.

In the event the Company shall make a contribution to the Trust Fund which includes contributions allocable both to Pension and Annuity benefits and to the Program, the Company shall clearly specify the portion of such contribution allocable to Pension and Annuity Benefits and the portion allocable to the Program.

In the event that all liabilities of the Program shall have been fully satisfied and there are no persons participating in the Program or eligible therefor, the entire balance in the separate account relating to the Program shall be paid by the Trustee to the Company.

E. *Eligibility and Enrollment*

(a) Only retired Employees who are receiving Pensions from the Management Plan, their spouses and dependents (as defined in Appendix I, Part A), and surviving spouses who are receiving Annuities from the Management Plan and their dependents (as defined in Appendix I, Part A) shall be eligible for medical/ hospital benefits, and only retirees receiving Pensions, their spouses and surviving spouses shall be eligible for prescription drug benefits; provided, however, that former Employees whose employment terminated because of disability and who are eligible for an immediate Pension under the Management Plan but have deferred commencement of such pension to continue to receive Long Term Disability benefits, shall also be eligible to enroll in the Program.

(b) Each eligible retired Employee and surviving spouse must enroll and commence participation in the Program upon the earlier of the Effective Date or the earliest date she or he may participate. However, a retired Employee who commences receiving a Pension from the Management Plan upon termination of employment with the Company and who is eligible to participate in a group (not individual) medical/hospital benefit program provided by any source other than the Company and the surviving spouse of such retired Employee whose death terminates such other group coverage for such surviving spouse, may delay commencement of participation in this Program until expiration of such other group coverage, provided that such retired Employee or surviving spouse continues to receive a

Pension or Annuity from the Management Plan at the time participation in this Program is to commence. Any such retired Employee or (50) surviving spouse who desires to participate in this Program shall so notify the Plan Administrator and shall furnish to the Plan Administrator proof of such other group coverage and of its expiration. In addition, a surviving spouse who is receiving an annuity from the Management Plan, but who is also actively employed by the Company and/or covered by its group coverage, must delay commencement of participation in this Program until termination of employment with the Company or other discontinuance of participation in the Company's group coverage.

FAILURE BY AN ELIGIBLE PERSON TO ELECT TO PARTICIPATE SHALL BE DEEMED TO BE A DECLINATION BY SUCH PERSON. IF AN ELIGIBLE PERSON DECLINES TO PARTICIPATE OR IS DEEMED TO HAVE DECLINED TO PARTICIPATE, SUCH PERSON AND SUCH PERSON'S SURVIVING SPOUSE AND DEPENDENTS SHALL NOT PARTICIPATE IN THE PROGRAM AND SHALL NOT BE ELIGIBLE TO PARTICIPATE AT A LATER DATE.

(c) Each retiree or surviving spouse eligible for medical/hospital benefits beginning on the Effective Date shall be notified, not less than 90 days before the Effective Date, of such eligibility and of the terms and conditions of such benefits. After the Program is effective, each Employee or surviving spouse shall be notified not more than 90 days prior to the earliest date she or he may participate, of such eligibility and of the terms and conditions of such benefits. Such notice shall be in writing and written in such manner as to be understood by a person of average intellect and ability. Each eligible person desiring to participate shall elect to participate by completing and signing enrollment forms provided by the Plan Administrator not later than 30

days before the earliest day she or he may commence participation (or within 60 days after receipt of notification in the case of a surviving spouse of a suddenly deceased Employee).

(d) Each retiree or surviving spouse eligible for prescription benefits shall receive an identification card and instructions for securing such benefits.

F. *Limitations and Restrictions*

Except as provided in section 23.4, all contributions to the Program and earnings thereon, if any, shall be for the exclusive benefit of enrolled participants, and no part of such assets shall be diverted to any other purpose. In no event shall assets of the Plan relating to Pension and Annuity benefits be utilized for health benefits, and in no event shall assets of the Program be utilized for Pension or Annuity benefits.

(51) The Program shall be administered in such manner that it shall not discriminate in favor of shareholders, officers and highly compensated Employees of the Company. In the event an Employee who during any Plan Year was a Key Employee shall be a participant in the Program, all company contributions with respect to such Key Employee and his surviving spouse and dependents shall be recorded in a separate individual medical benefit account, as defined in section 415(1) of the Code, and shall be treated as "annual additions" to a defined contribution plan for purposes of section 11.A.3.

G. *Termination or Modification*

THE COMPANY RESERVES THE RIGHT IN ITS ABSOLUTE DISCRETION AT ANY TIME AND FROM TIME TO TIME AND WITHOUT PRIOR NOTICE TO

PARTICIPANTS, TO AMEND, MODIFY OR TERMINATE IN WHOLE OR IN PART THE RETIREE HEALTH PROGRAM SET FORTH ABOVE AND IN APPENDIX I AND TO REDUCE, CEASE OR INCREASE ITS CONTRIBUTIONS TO THE PLAN FOR THE PROGRAM. NO SUCH AMENDMENT, MODIFICATION, TERMINATION OR CHANGE IN COMPANY CONTRIBUTIONS SHALL RETROACTIVELY AFFECT ADVERSELY ANY PARTICIPANT'S BENEFIT UNDER THE PROGRAM.

Appendix I—Retiree Health Program

Part A—Benefits

I. Hospital/Medical Benefits

Description:

A hospital and medical plan for eligible retirees, and spouses, eligible surviving spouses of retirees, and unmarried dependent children to the end of the calendar year in which they attain age 19, or to the end of the calendar month in which they attain age 23 if full-time unmarried students, or unmarried handicapped children fully dependent on the eligible retiree or surviving spouse for support and maintenance regardless of age, provided such handicap was suffered prior to attaining age 19 or while covered by this plan. Benefits will be provided to those under age 65, and those over 65 except that benefits provided shall, for those Participants over 65 who are eligible for Medicare Parts A and B benefits, exclude benefits available under Medicare Parts A and B, whether or not such Participants have enrolled in Part A and/or Part B. Coverage will be provided through a combination of three premium rates established for: Single person under age 65, Single person over age 65, and coverage for dependent children.

Annual Deductibles:

Hospital—50% of the Part A Medicare annual per person deductible amount in effect at the time of the hospitalization (subject to a maximum $50 per person annual out-of-pocket expense for home health care expenses).

Medical—$200 per person per year (includes the Medicare Part B deductible). Coverage for families with 4 or more persons would require a deductible of $600 divided among at least three family members.

Medical Expense Reimbursement Level:

Usual and prevailing levels as determined by the company providing or administering medical expense benefits.

Medical Expense Co-payments:

20% for expenses from $200 to $7,500 per person per year.

(53) None for expenses over $7,500 per person per year.

Medical Expense Lifetime Maximum, Reimbursement:

$1,000,000 paid by the Plan for each individual.

Benefits:

Hospital (Paid-in-Full)

A. Up to 365 days for semi-private room and board and other usual charges in legally constituted hospital, skilled nursing facility approved by Medicare, or hospice.

B. Up to 100 days of rehabilitative care in a JCHA rehabilitation institution per person per year.

C. 30 days per person per year for treatment of mental, psychoneurotic, or personality disorders in semi-private room in an approved facility (subject to a $50,000 lifetime maximum per person for all mental, psychoneurotic, or personality disorders).

D. Up to 200 home health care visits per person per year by a licensed approved Home Health Care Agency.

E. Emergency room charges for accidental injury or sudden and serious illness (not subject to deductible).

F. Outpatient pre-admission testing (not subject to the deductible).

H. Pregnancy is treated the same as any other sickness.

Medical

A. Payment of 100% of usual and prevailing charges (not subject to the deductible) for:

° Charges for out-patient surgery, provided a second opinion has been obtained, if required by the Plan

° Mandatory second opinion, which is required by the Plan for the following elective surgical procedures:

—All foot surgery, including bunionectomy, arthrotomy, phalangectomy, capsulotomy, arthrodesis, arthroplasty, and straightening of hammer toe.

(54) —Varicose vein ligation and stripping

—Knee surgery, including arthrectomy, arthrotomy, arthroscopy with partial meniscectomy, and arthroplasty.

—Coronary Bypass procedures

—Dilation and Curettage

—Cataract surgery

—Varicocelectomy

—Hysterectomy

—Mastectomy

—Prostate surgery

—Intervertebral disc or spinal surgery

—Hemorrhoidectomy

—Deviated septum repair or reconstruction

B. Payment of 50% of usual and prevailing charges, subject to deductible, for:

° Elective surgical procedures for which mandatory second opinion has not been obtained

° Outpatient treatment of mental, psychoneurotic, and personality disorders (subject to $1,000 annual and $50,000 lifetime maximum per person)

° Routine foot care ($250 maximum per person per year)

° Licensed Chiropractor services ($500 maximum per person per year)

C. Payment of usual and prevailing charges, subject to deductibles and co-payments, for:

° Hospital services and supplies not covered under Hospital benefits

° Physician's services and supplies furnished as part of those service:

° In-patient surgical charges, provided a second opinion has been obtained, if required by the Plan

(55) ° X-Rays; X-Ray Radium and Radioactive isotope therapies; Chemotherapy

° Laboratory services and diagnostic testing

° Surgical dressings, casts, splints, and other devices used for reductions, fractures and dislocations

° Anesthetics and their administration

° Rental or purchase of durable medical equipment when medically necessary

° In-patient and outpatient private duty nursing care at a level determined appropriate and medically necessary by the physician

° Medically necessary ambulance services

° Artificial limbs, larynges, eyes and other non-dental prosthetic devices

° Braces, trusses and crutches

° Heart pacemakers

° Treatment of accidentally injured natural teeth within 12 months of accident, including dental surgery and prosthetic devices

° Manual manipulation of the spine to correct a subluxation demonstrated by X-ray

° Oxygen

° Examination, purchase, and fitting of hearing aids, not subject to 20% co-payment, but subject to a maximum of $300 per ear per lifetime

° Physical, speech, and occupational therapy when medically necessary

° Transfusions of blood and blood components and charges for the administration of the same

° Renal dialysis

Exclusions:

° Injuries arising out of, or in the course of, employment for pay

° Injury or sickness caused by an act of war

(56) ° Prescription drugs and medications (except those dispensed during a hospital stay)

° Custodial Care

° Doctor's services or X-rays relating to teeth (except for treatment of accidental injury to natural teeth or removal of malignant mouth tumor)

° Services and supplies provided by any government agencies, or covered by worker's compensation, governmental agencies, no-fault insurance, or where there is no obligation to pay

° Routine check-ups

° Eyeglasses, contact lenses, eye examinations, vision training, and eye surgery to correct near-or far-sightedness or astigmatism

° Immunizations

° Acupuncture except when medically necessary and provided by a licensed physician

° Cosmetic surgery (except reconstructive surgery required as a result of injury, infection, disease or bodily function impairment due to birth disease or defect)

° Personal comfort items

° Experimental procedures or therapies

° Orthotic devices

° Blood or blood plasma replaced by or for the patient

° Actual or attempted impregnation or fertilization

° Nursing or any therapy provided by the retiree, or retiree's spouse, child, brother, sister, parent or parent-in-law

° Services or supplies not reasonable or customary or not medically necessary

(57) *II. Prescription Drug Benefits*

Description:

A prescription drug payment Plan for retirees and their spouses, or surviving spouses of retirees (but *not* for their dependents). Benefits are administered initially by Pharmaceutical Card System, Inc. ("PCS") for basic benefits and by National Pharmacies, Inc. ("NPI") for the mail service program, but the Company may select other firms to process and administer these benefits.

Cost to Participants:

Each prescription or refill requires the co-payment set forth in Part B (the "required co-payment") to be made by the retiree, but the Plan pays the entire balance of the cost for prescriptions filled under mail service coverage and at pharmacies designated as participating pharmacies for basic benefits.

Participants using non-participating pharmacies must pay for their prescriptions and submit reimbursement claims to the Plan. The Plan will reimburse such Participants for seventy-five percent (75%) of the excess of the cost of that prescription at a participating Pharmacy over the required co-payment.

Basic Coverage:

Virtually all legend drugs and medicines requiring a prescription from a doctor are eligible for payment. Compounded medication must include at least one prescription

legend drug. A quantity sufficient for 34 days may be dispensed. Included are insulin and drugs prescribed for chronic conditions. Certain chronic prescription drugs may be dispensed in amounts up to 100 unit doses.

Refills of prescriptions are also covered. Authorized refills may be filled only up to one year from the date of the original prescription. After one year, the Plan requires a new prescription from the physician.

There is no limit to the number of prescriptions that may be filled, but the Participant must make the required co-payment for each prescription and each refill.

Prescription costs are covered whether the prescribing doctor is a doctor of medicine, a doctor of osteopathy, a dentist or a podiatrist.

(58) *Mail Service Coverage:*

Prescription drugs taken on an ongoing basis are available in up to 180 day supply quantities by mail from NPI. The same drugs are included for mail service, benefits as for basic coverage.

Exclusions:

—Medicines and drugs ordinarily available, without a doctor's prescription.

—Charges for the administration or injection of any drug.

—Therapeutical devices or appliances, including hypodermic needles, syringes, support garments and other non-medical substances, regardless of intended use (except that

hypodermic needles and syringes are covered under the mail service program).

—Investigational or experimental drugs.

—Immunization agents, biological sera, blood or blood plasma.

—Medication taken or administered to an individual, while he or she is a patient in a licensed hospital, rest home, sanitarium, extended care facility, convalescent facility, nursing home, etc., which operates on its premises a facility for dispensing pharmaceuticals.

Securing Basic Benefits:

Eligible participants will receive a PCS identification card to be presented with the required co-payment at PCS Participating Pharmacies. If prescriptions are purchased at non-participating pharmacies, the pharmacist must complete a PCS Prescription Drug Claim Form for submission to PCS, PCS will return the reimbursable amount, which equals 75% of the cost of the prescription at a participating pharmacy in excess of the required co-payment.

Securing Mail Service Benefits:

Eligible participants should submit a Patient Profile Questionnaire to NPI together with the first prescription for up to a 180 day supply (refillable if applicable), and the required co-payment for each prescription. Only the required co-payment for each prescription or refill must be submitted with all future prescriptions or refills.

(59) *III. Modification or Termination of Program*

THE COMPANY RESERVES THE RIGHT IN ITS ABSOLUTE DISCRETION AT ANYTIME AND FROM TIME TO TIME AND WITHOUT PRIOR NOTICE TO PARTICIPANTS, TO AMEND, MODIFY OR TERMINATE IN WHOLE OR IN PART THE RETIREE HEALTH PROGRAM SET FORTH IN THIS APPENDIX I, AND TO REDUCE, CEASE OR INCREASE ITS CONTRIBUTIONS TO THE PLAN FOR THE PROGRAM. NO SUCH AMENDMENT, MODIFICATION, TERMINATION OR CHANGE IN COMPANY CONTRIBUTIONS SHALL RETROACTIVELY AFFECT ADVERSELY ANY PARTICIPANT'S BENEFITS UNDER THE PROGRAM.

(60) *Appendix I—Retiree Health Program*

Part B—Costs

1986 Retiree Monthly Contribution for Medical/Hospital Benefits

The following amounts for each participating eligible individual shall be deducted during 1986 from the monthly Pension or Annuity payments to the retiree or surviving spouse:

	Under 65	*Over 65*
Retiree	$30	$10
Dependent	$45	$15
Surviving Spouse	$30	$10

1986 Required Co-Payment For Prescription Drugs

During 1986, the required co-payment for each prescription and refill shall be $2.00.

1986 Company Contribution

During 1986, the Company will contribute to the Trust the amount necessary to pay the excess of total costs of the Program for 1986 over total retiree contributions.

The Company will review premium levels and other facts and circumstances for purposes of determining, in its sole discretion, what level of contributions, if any, it elects to provide in 1987 and subsequent years.

Effective Dates

The contribution levels set forth above are effective for calendar year 1986. New rates will be established by the insurance carrier for 1987 and subsequent calendar years. ANY INCREASES IN RATES OVER 1986 SHALL BE THE SOLE RESPONSIBILITY OF PARTICIPATING INDIVIDUALS, except to the extent the Company, in its sole discretion, elects to increase its contribution over 1986 levels.

* * *

[Actuarial Tables Omitted]

Exhibit I—Summary Plan Description booklet for The Consolidated Edison Retirement Plan for Management Employees, dated effective January 1, 1983

Retirement
Plan
for
Management
Employees

Con Edison

Effective: January 1, 1983

INTRODUCTION

This booklet describes your benefits under the Consolidated Edison Retirement Plan for Management Employees. Effective January 1, 1983 all management employees are covered under this plan including management employees who were previously covered under the Consolidated Edison Pension and Benefits Plan. Employees who retired as management employees prior to January 1, 1983, or their surviving spouses, will have all future benefits paid under this plan in accordance with provisions of the plan in effect at the time of their retirement including any subsequent benefit improvements provided to such retirees.

Each year you will receive an individual statement showing your accrued pension benefit as of December 31, of the preceding year, and a projection of your pension benefits at normal retirement age. In addition, you will receive an annual report of the financial condition of the plan.

Your Retirement Plan for Management Employees is one of the most valuable parts of your total benefits program. Therefore, we ask you to read this "Summary Plan Description" carefully, as it is designed to help you under-

stand how your Retirement Plan works. If you have any questions about the plan, contact the Retirement Programs Section of Benefits Planning and Administration, Room 947-S, 4 Irving Place, telephone 460-2239 or 460-2439.

Donald L. Miller
Vice President and
Plan Administrator

CONTENTS

I. PARTICIPATION IN THE PLAN
Who is Eligible to Participate 1

II. RETIREMENT AGES
When You Can Retire Under the Plan 2

III. RETIREMENT BENEFITS—
RETIREMENT AT AGE 62 OR LATER
How Much the Plan Pays if You Retire
at Age 62 or Later..... 3

IV. RETIREMENT BENEFITS—
EARLY OPTIONAL RETIREMENT
How Much the Plan Pays if You
Retire Before Age 62 6

V. METHODS OF PAYMENT
How Pensions are Paid to You
and Your Spouse..... 9

VI. VESTING
What Happens if Your Employment
Terminates Before Retirement 11

VII. DISABILITY
What Happens During Periods
of Disability 13

VIII. PRE-RETIREMENT SURVIVING
SPOUSE BENEFITS
What the Plan Will Pay if You
Die Before Retirement 14

IX. TRANSFERS
What Happens if You Transferred From Weekly to Management Status or From Management to Weekly Status 15

X. YEARS OF ACCREDITED SERVICE
How Your Service is Counted 16

XI. OTHER IMPORTANT FACTS

Company 17
Plan Administration 17
Plan Identification Numbers 17
IRS Approval 17
Maximum Pensions 17
Claims 17
Statement of ERISA Rights 18
Insurance of Benefits 20
Contributions and Funding 20
Plan Documents 20
Plan Continuance 21
Glossary of Terms Used in this Booklet 22

Table A—Factors Used in Determining an Early Optional Retirement 26

Table B—Factors Used in Determining Qualified Joint & Survivor Annuity Benefits 32

Table C—Factors Used in Determining the Early Payment of a a Deferred Pension 34

Table D—Factors Used to Determine an Annuity in Lieu of a Surviving Spouse's Cash-Out Benefit 35

Table E—Factors Used in Determining a Qualified Joint & Survivor Annuity from a Deferred Pension..... 36

Table F—Factors Used to Determine Lump-Sum Cash-Out 38

Table G—Factors Used to Adjust Benefit of a Surviving Spouse Who is More than 10 Years Younger than the Employee..... 39

(1) **I. PARTICIPATION IN THE PLAN**

All employees of Con Edison who are on the management payroll on or after December 31, 1982 are eligible to participate in the plan, except employees hired after age 60. Eligible employees become participants immediately upon their employment with the Company, or when transferred to the management payroll.

Contributions from employees are not required in order to participate in the plan. The Company pays the full cost of plan benefits.

(2) **II. RETIREMENT AGES**

Retirement at Age 62 or Later

Your *normal retirement* date under the plan is the first day of the month following your 65th birthday. As a participant in the plan, you may retire at your normal retirement date with a monthly pension based on your earnings and service with the Company. Your pension will continue for the rest of your life.

You may retire between ages 62 and 65 with a pension that is not reduced if your years of service with the Company plus your age total 75 or more (the "Rule of 75"). Your pension will begin when you retire and continue for your life. It will be determined in the same way that the normal retirement pension at age 65 is calculated. If you elect to work beyond age 65, see "Deferred Retirement" below.

If you are married at the time of retirement, your spouse will be eligible for a lifetime pension following your death under conditions described in Section V.

Early Optional Retirement

If you satisfy the Rule of 75 and retire before age 62, you will be eligible for an *early optional retirement pension.* This pension will be determined in a similar fashion to the normal retirement benefit except that it will be reduced because you will be receiving it earlier and, therefore, for a longer period of time.

If you are married at the time of retirement, your spouse will be eligible for a lifetime pension following your death under conditions described in Section V.

Deferred Retirement

If you choose to continue working for the Company past your normal retirement date, your pension will be deferred until you actually retire. In such case, your pension will be equal to the amount you would have received had you retired at normal retirement date. All employees must retire from the Company on the first day of the month following their 70th birthday (Mandatory Retirement).

If you are married at the time of retirement, your spouse will be eligible for a lifetime pension following your death under conditions described in Section V.

(3) **III. RETIREMENT BENEFITS—RETIREMENT AT AGE 62 OR LATER**

The Company has adopted a benefit formula which takes into account your years of service, earnings near retirement (when they are the highest), and Social Security benefits. If you have *30 years of service* at age 65, your annual pension from the plan will be computed using the following formula:

RA187

55% X 5 Year Average Salary

less

50% X Social Security

The *5 Year Average Salary* is the average of the 60 consecutive months out of the last 120 months prior to retirement which produces the highest average. Salary for a calendar year is the rate of pay in effect in the last pay period in such calendar year. However, salary and service for years after attaining age 65 are not counted. *Social Security* means the primary amount payable to you at age 65, not counting Social Security benefits which may be payable to your spouse or dependents. Although the amount payable to you by Social Security is used in computing your benefit under the plan, there will be no effect on what Social Security will pay you.

If you have *less than 30 years* of service when you retire, your pension will be reduced proportionately. If you have *more than 30 years* of service, your pension will increase by .5% of the 5 Year Average Salary for each year above 30.

Example A—30 Years of Service

To illustrate how the formula works, let's compute benefits for an employee who is retiring at age 65 on January 1, 1983 with 30 years of Company service. Let's assume that this employee's salary history has been as follows:

	Salary		Salary
1982	$35,000	1977	$22,700
1981	32,100	1976	20,900
1980	29,500	1975	19,100
1979	27,000	1974	17,600
1978	24,800	1973	16,100

In this example, the employee's *5 Year Average Salary* would be $29,680—the average over the (4) period 1978 through 1982. Let's also assume that Social Security for this individual amounts to $8,500 a year. Using the pension formula shown above, here's how benefits for this employee will be figured:

$16,324 (55% X $29,680) minus
- 4,250 (50% X 8,500)
$12,074 Con Edison Pension

The employee in this example will have *total retirement income* from the plan and from Social Security of *$20,574* annually if single (Con Edison pension of $12,074 plus $8,500 of Social Security), or $24,824 if married (Con Edison pension of $12,074, primary Social Security of $8,500, plus $4,250 of spouse's Social Security at age 65).

In this example, the employee, who is single and a resident of New York City, has take-home pay *before retirement* in the vicinity of $22,500 (after subtracting federal, state and local income taxes and Social Security taxes). If the employee is married, his or her take-home pay would be about $25,000. In general, *after retirement,* individuals are subject to lower taxes for several reasons:

—Social Security benefits are not subject currently to income taxes.

—Pension benefits are not subject to Social Security tax.

—People over age 65 qualify for an additional personal exemption.

—Although state tax laws differ, New York State and New York City exempt the first $20,000 of pension benefits from their income tax.

As a result, retirees often keep a larger share of their gross income after they retire than while they were working. In this example, for the single employee taxes after retirement may amount to only $1,500, resulting in after-tax retirement income of $19,074 ($20,574 less $1,500), replacing about *85%* of pre-retirement take-home pay of $22,500. For the married employee, taxes would be about $1,000, resulting in after-tax retirement income of $23,824, replacing about *95%* of the pre-retirement take-home pay of $25,100.

Example B—40 Years of Service

If the employee had *40 years of service* at age 65, he or she would be entitled to an additional 5% (.5% per year times 10 years) of the 5 Year Average Salary, or $1,484.

(5) This would mean a Con Edison pension of *$13,558* ($12,074 plus $1,484), and a total retirement income of *$22,058* including Social Security.

Example C—15 Years of Service

To illustrate how the plan works when the employee has *less than 30 years of service,* let's assume that the employee retired with only 15 years of service with the Company. In this case, his or her pension would be exactly one-half the pension determined in Example A, or *$6,037.*

$$\frac{15}{30} \text{ X } \$12{,}074 = \$6{,}037$$

Assuming this individual had a full career of employment, he or she would still qualify for $8,500 in Social Security income for a total retirement income of $14,537 ($6,037 plus $8,500).

Benefits for Participants of the Prior Plan

If you were an employee of the Company on December 31, 1982, whether as a management or a weekly employee and retire under this plan, you will be entitled to a minimum benefit equal to the pension you would have received under the prior plan. In other words, your pension will be calculated two ways—according to the old and new pension formulas—and you will receive whichever amount is higher.

The formula retained from the prior plan is as follows:

2.2% X Total Salary

Total Salary represents your earnings for 14 years prior to retirement, plus earnings in earlier years credited at your earnings rate in the 14th year, provided that no more than 30 years of earnings are included. For employees with more than 30 years of service, the amount determined by this formula is increased by 1.5% for each year of service over 30.

For most career employees, the new formula will produce higher benefits than the prior plan formula. By way of illustration, the employee in Example A above would receive a Con Edison pension of about $10,500 under the prior plan formula as compared with $12,074 under the new formula.

(6) **IV. Retirement Benefits—Early Optional Retirements**

Early Optional Retirement—Before Age 62

If you retire *before* age 62 and satisfy the Rule of 75, your pension will be calculated according to the following procedure:

Step 1: Determine your 5 Year Average Salary at early retirement date and estimated Social Security at age 65.

Step 2: Determine "Projected Service", which is the number of years of service you would have if you remained employed by the Company until age 62.

Step 3: Calculate your "Projected Pension" at age 62 based on the normal retirement formula using 5 Year Average Salary, Social Security at age 65, and Projected Service from Steps 1 and 2.

Step 4: Multiply the result of Step 3 by the ratio of your actual service at early retirement date to Projected Service (Actual Service ÷ Projected Service).

Step 5: Multiply the result of Step 4 by an Early Retirement Factor from Table A to reflect the fact that payments will be made over a longer period of time.

Sample of Early Retirement Factors
Used for Early Optional Retirement

Age	*Factor*
61	.985
60	.970
59	.955
58	.940
57	.925
56	.628
55	.580
54	.544
53	.508
52	.472
51	.436
50	.412

(7) Example A

Let's take an employee who was hired at age 25 and retires at age 55 with a 5 Year Average Salary of $25,000. Let's say this employee's estimated Social Security at 65 is $7,000 a year.

Step 1: 5 Year Average Salary equals $25,000. Social Security equals $7,000.

Step 2: Projected Service is total service from age 25 to age 62, or *37 years.*

Step 3: Projected Pension is $11,125:

55% X $25,000 = $13,750

less

50% X $7,000 = 3,500

$10,250

plus

7 years X .5% X $25,000 = 875

$11,125

Step 4: Actual Service / Projected Service X Projected Pension

$$\frac{30}{37} \text{ X } \$11,125 = \$9,020$$

Step 5: $9,020 X .580 (the early retirement factor for age 55)

Annual Pension = $5,232

Example B

If the employee in Example A above was age 58, the Early Optional Retirement benefit would be determined as follows:

Step 1: 5 Year Average Salary is $25,000
Social Security is $7,000

Step 2: Projected Service is total service from age 25 to age 62 or *37 years*

(18) Step 3: Projected Pension is $10,878, determined as follows:

55% X $25,000 X .94000* = $12,925

less

50% X $7,000 X .82000** = 2,870

$10,055

plus

7 years X .5% X $25,000
X .94000* = 823

$10,878

*Early Retirement Factor, Column I, for age 58
**Early Retirement Factor, Column II for age 58

Step 4: $\frac{\text{Actual Service}}{\text{Projected Service}}$ X Projected Pension

$\frac{33}{37}$ X $10,878 = $9,702

Step 5: Annual Pension = $9,702

If you were employed by the Company on December 31, 1982, your benefit will also be calculated under the formula carried over from the prior plan (reduced by early retirement factors from column I of Table A), and you will receive whichever benefit is higher.

(9) **V. Methods of Payment**

For Single Employees

If you are single when you start receiving a pension from the plan, your pension will continue as long as you live, but no benefits will be payable to anyone after your death.

For Married Employees

If you are married when you retire, you may choose one of two ways to provide a benefit for your spouse:

—A Qualified Joint & Survivor Annuity, or

—A Surviving Spouse Benefit

The *Qualified Joint & Survivor Annuity* is the method of payment (as prescribed by ERISA) unless you decline to provide it.

Under the Qualified Joint & Survivor Annuity, your spouse, to whom you were married when you retired and who survives you, will receive 50% of your pension, as reduced in order to provide this benefit, for his or her life, regardless of whether he or she remarries. The amount of reduction will depend on your age and your spouse's age when your benefits begin.

The following extract from Table B shows selected reduction factors under the Qualified Joint & Survivor Annuity option for a variety of ages.

Your Spouse's Age Is

Your Age	The Same As Yours	1 Year Younger	5 Years Younger	10 Years Younger
65	.972	.970	.966	.961
60	.977	.976	.972	.968
55	.981	.980	.977	.974

Under the *Surviving Spouse Benefit,* 40% of your pension will continue to your spouse for his or her life (or until remarriage) following your death. This option requires no adjustment to your pension or the benefits to your surviving spouse, unless your spouse is more than 10 years younger than you. The extract from Table G below illustrates the reduction factors which would apply to the spouse's benefit if you elect the Surviving Spouse Benefit option and your spouse is more than 10 years younger.

(10)

Years By Which Spouse Is Younger Than You	Reduction Factor To Be Applied To The Surviving Spouse Benefit
11	.985
12	.971
13	.958
14	.945
15	.933
16	.922
17	.911
18	.901
19	891
20	.882

Example A

Assume that an employee is retiring at age 65 with a spouse age 60, and that the employee qualifies for a pension of $10,000 from the plan. The employee may elect

either a Surviving Spouse Benefit or a Qualified Joint & Survivor Annuity. The benefits payable by the plan would be:

Benefit Elected	*Retiree*	*Surviving Spouse*
Qualified Joint & Survivor Annuity	$ 9,660	$4,830
Surviving Spouse Benefit	$10,000	$4,000

Example B

If the spouse in the example above were age 50, the benefits payable would be:

Benefit Elected	*Retiree*	*Surviving Spouse*
Qualified Joint & Survivor Annuity	$ 9,560	$4,780
Surviving Spouse Benefit	$10,000	$3,732

(11) **VI. Vesting**

If you leave the Company *after* completing 10 years of accredited service but *before* qualifying for early retirement, you will be vested in an accrued pension.

An employee with a vested accrued pension who terminates may elect either:

—A *deferred pension* beginning at age 65 (or a reduced benefit once the Rule of 75 is attained, if earlier), or

—A *lump-sum cash-out* of the deferred pension.

A deferred pension will be determined in the following manner:

Step 1: Determine your 5 Year Average Salary at termination date and estimated Social Security at age 65.

Step 2: Determine "Projected Service", which is the number of years of service you would have if you remained employed until age 65.

Step 3: Calculate your "Projected Pension" at age 65 based on the normal retirement formula using 5 Year Average Salary, Social Security, and Projected Service from Steps 1 and 2.

Step 4: Multiply the result of Step 3 by the ratio of your actual service at termination date to Projected Service (Actual Service ÷ Projected Service) to determine deferred pension.

Example A—Deferred Pension at Age 65

Let's take an employee who was hired at age 25 and terminates at age 45 with a 5 Year Average Salary of $25,000. Assume that this employee's estimated Social Security at age 65 is $7,000 a year.

Step 1: 5 Year Average Salary is $25,000.
Social Security equals $7,000.

Step 2: Projected Service is total service from age 25 to age 65, or *40 years*.

(12) Step 3: Projected Pension is $11,500:

55% X $25,000	=	$13,750
less		
50% X $7,000	=	3,500
		$10,250
plus		
10 years X .5% X $25,000 =		1,250
		$11,500

Step 4: $\frac{\text{Actual Service}}{\text{Projected Service}}$ X Projected Pension

$\frac{20}{40}$ X $11,500 = $5,750 (Deferred Pension)

If you terminate before meeting the Rule of 75 and elect a deferred pension with payment to begin at age 65 and die before your age and service equal 75 (the time at which you become eligible for an immediate pension), your surviving spouse will not be eligible for a benefit from the plan.

Example B—Early Optional Pension

Employee elects early optional pension at age 55 when Rule of 75 is attained. Pension is determined as follows:

Deferred Pension from Example A
X Reduction Factor from Table C =
Early Reduced Pension

$5,750 X .400 = $2,300

Example C—Lump-Sum Cash-Out of Deferred Pension

Employee (age 45) elects to take an immediate Lump-Sum Cash-Out of the Deferred Pension. The Cash-Out is calculated as follows:

Deferred Pension from Example A
X Factor from Table F =
Lump-Sum Cash-Out

$5,750 X 2.7271 = $15,681

If you cash-out your vested rights, you lose credit for the service on which the cash-out is based. If you are reemployed by the Company after you have received your cash-out and you want to regain credit for prior service, you will have to pay back your cash-out with interest.

(13)

VII. Disability

If you no longer can work because of a total and permanent disability, and you qualify for Social Security disability benefits, you will continue to earn credit for service under the plan as if you were still actively employed at your last salary rate. Benefits then will begin at age 65. This feature of the plan complements the Company's voluntary Long Term Disability Plan for Management Employees which provides a monthly income benefit until age 65 as long as you remain totally and permanently disabled.

Other options:

1. If you are vested but do not meet the Rule of 75, you may elect

- A deferred pension, or
- A lump-sum cash-out.

2. If you meet the Rule of 75, you are eligible for

• An immediate pension, or

• A deferred pension, or

• A disability pension reduced by 1 1/2% per year for ages below 62 provided you were an employee of the Company on December 31, 1982, became disabled as determined by the Company, and terminated or retired.

(14) **VIII. Pre-Retirement Surviving Spouse Benefits**

Your spouse will be eligible for benefits from the plan if you have completed 10 years of accredited service with the Company and die while still working for the Company.

1. If you do not meet the Rule of 75:

If you were not eligible for retirement at the time of your death, your spouse may receive a lump-sum benefit equal to 50% of the value of your cash-out. Alternatively, your spouse may convert this lump-sum to an annuity payable for his or her life, of equivalent value in accordance with Table D.

2. If you meet the Rule of 75:

If you were eligible for early optional or normal retirement before death, your spouse will receive a life income equal to the amount that would have been payable if you had retired immediately before death and provided a Qualified Joint & Survivor Annuity.

(15) **IX. Transfers**

All service with the Company is used to determine *eligibility* for benefits. This means, for example, that an employee on the weekly payroll, who transfers to the man-

agement payroll with 10 years of service, will be vested immediately upon transfer in any benefits accrued under this plan. Benefits payable under the plan to a management employee who was formerly a weekly employee will be determined as follows:

(a) The employee's benefit will be calculated as if all Company service had been as a management employee.

(b) The amount in (a) will be offset by any benefits accrued under the plan which covers weekly employees. However, in no event will the benefit under this plan be less than the benefit based on management service only.

Example

Let's take an employee who was hired as a weekly employee in 1972 at the age of 23, and is promoted to management effective January 1, 1984. As of the promotion date, the employee has an accrued pension under the Pension and Benefits Plan. Upon retirement, this employee's pension from the Retirement Plan for Management Employees will be determined using all accredited service with the Company, and the pension amount will be reduced by the accrued pension earned and payable under the Pension and Benefits Plan. In this case, the employee will receive pension payments from both plans.

An employee who was a participant in this plan and transfers to the weekly payroll will receive benefits upon retirement that have been accrued under this plan to the date of transfer (if otherwise eligible).

(16) X. YEARS OF ACCREDITED SERVICE

For purposes of determining if you are vested, one year of service will be credited for each calendar year in which you complete at least 1,000 hours of service.

For purposes of calculating benefits, all continuous employment as a management employee is counted, and special provisions apply to transfers as described in Section IX.

If you have less than 10 years of service and experience a Break in Service (working less than 501 hours a year) which lasts longer than your pre-break service, you will lose credit for the pre-break service.

(17) XI. OTHER IMPORTANT FACTS

Company

The term Company, as used in this booklet, means Consolidated Edison Company of New York, Inc., the sponsor of this Plan.

Plan Administration

The Plan is administered by the Plan Administrator, who is the Vice President, Employee Relations, 4 Irving Place, New York, New York 10003.

Plan Identification Numbers

The Plan is identified by the following numbers:

#13-5009340—assigned by the Internal Revenue Service (IRS) as the Employer Identification Number (E.I.N.)

#005—assigned by the Company as the Plan Number (PN)

IRS Approval

The Company expects to receive and maintain approval of the plan by the Internal Revenue Service (IRS). The IRS may, however, require changes in the plan before it will give its approval.

Maximum Pensions

The Internal Revenue Code limits the annual benefit payable to any individual. At present, the limit is $90,000 per year. The Plan will not pay benefits in excess of that dollar limit.

Claims

The procedures to be followed where questions arise or claims are made against the Consolidated Edison Retirement Plan for Management Employees are:

1. All claims for benefits provided by the plan must be submitted to the Retirement Programs Section which will determine the benefit and provide written notification thereof to the claimant.

2. Any question or dispute concerning the determination of benefits, if unresolved by the Retirement Programs Section, must be referred (18) to the Manager—Retirement Programs, who will review the correctness of the benefit determined and provide the claimant within 15 days a full explanation of how the benefit was determined.

3. If, after the review and explanation by the Manager—Retirement Programs, the claimant continues to dispute the benefit determined, the claim will be reviewed by the Manager—Benefits Planning and Administration who, within 90 days from the date the claim was submitted to the Retirement Programs Section, will provide to the claimant a full written explanation of the determination of the benefit including, where applicable, the reason for the denial or delay in the claims processing.

4. If, after completion of the foregoing review procedures, the dispute is unresolved and the claim is wholly or partly denied, the plan participant may, not later than 60 days after receiving the reply from the Manager—Benefits Planning and Administration, request a further review of his claim. Request for such a review shall be submitted and addressed to the Plan Administrator, Retirement Plan for Management Employees, 4 Irving Place, New York, New York 10003, Room 1605-S. The Manager—Benefits Planning and Administration shall be notified promptly by the Plan Administrator of the request for review and shall thereupon provide the Plan Administrator with all facts and proof relevant to the claim and determination of benefits. The Plan Administrator shall inform the claimant of his decision, in writing, not later than 60 days after receiving the request for review.

5. At any stage in this claims procedure, the office or individual determining the claims shall, upon request to the claimant or any of the appropriate offices, be provided with such facts and supporting evidence as may be required or desired.

Statement of ERISA Rights

As a participant in this plan you are entitled to certain rights and protection under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Examine, without charge, at the plan administrator's office all plan documents and copies of all documents filed by the ~~plan~~ with the U.S. Department (19) of Labor, such as detailed annual reports and plan descriptions.

Obtain copies of all plan documents and other plan information upon written request to the plan administrator. The administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (age 65) and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once a year. The plan must provide the statement free of charge.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of this plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan partici-

pants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA. If your claim for a pension benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the plan reviewed and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file a suit in a federal court. In such a case, the court may require the plan administrator to provide the materials and pay up to $100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and (20) legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees if, for example, it finds your claim is frivolous. If you have any questions about your plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor.

Insurance of Benefits

The vested pension and benefit payments under the plan are insured under the Pension Benefit Guaranty Corporation, a corporation set up by the government under ERISA.

Its address is P.O. Box 7119, Washington, D.C. 20044. If the Plan were ever terminated, payment of vested pensions and benefits would be guaranteed subject to the limitations established by law.

Because of the complexity of this provision of the law, any employee or beneficiary who may be interested in a more detailed explanation may request the Plan Administrator, through the Retirement Programs Section, to furnish this information.

Contributions and Funding

The pensions and benefits now being paid and payable in the future are being funded through a Trust Fund. Upon the advice of an independent actuary, the Company periodically contributes to the Fund a sufficient sum of money which when invested will add up over a specified period of years to an amount large enough to pay pensions and benefits as they become due.

The contributions are paid by the Company to a Master Trustee, with various large banks and other financial institutions acting as investment managers. Each year you will receive a financial report on the status of the Fund from the Company in the form of a Summary Annual Report.

The actuarial report and the report to participants and other financial matters are maintained on a calendar year basis.

Plan Documents

This booklet describes only the highlights of the plan and does not attempt to cover all its details. These are provided in the official plan text and Trust Agreement which legally govern the operation of the plan.

(21) In the event of any conflict between the official documents and the booklet, the former will prevail. These documents, as well as the annual report of plan operations and plan descriptions as filed with the U.S. Department of Labor, are available for review in the Retirement Programs Section of Benefits Planning and Administration during normal working hours. Upon written request to the Retirement Programs Section, copies of any of these documents will be furnished to any plan member or beneficiary within 30 days. A nominal cost may be charged for this.

Plan Continuance

The Company expects and intends to continue the plan indefinitely but reserves the right to amend or end it at its discretion. If the plan is terminated or contributions completely discontinued, plan members will be fully vested in their rights under the plan to the extent then funded, in the order of preference specified in the plan or by law—subject to certain Treasury Department limitations which may be imposed on higher paid employees under certain specified conditions.

(22) GLOSSARY OF TERMS USED IN THIS BOOKLET

Accredited Service—Generally, the period of employment with Con Edison prior to normal retirement date, including any period when a participant is unable to work and qualifies for Social Security disability benefits.

Accrued Pension—The amount of benefit available at a particular time to a participant, as determined in accordance with this plan.

Annual Basic Straight-time Compensation—The participant's regular stated rate of pay in his or her last pay period in each calendar year, not including premium payments,

overtime payments, payments under deferred compensation, incentive, or other Company benefit or compensation plans.

Break in Service—Any calendar year in which a participant has not completed more than 500 hours of service, except for a period when a participant is unable to work and qualifies for Social Security disability benefits. (If a participant has less than 10 years of service and experiences a Break in Service which lasts longer than the pre-break service, he or she loses credit for pre-break service.)

Deferred Pension—A benefit payable to a terminated vested participant, with monthly payments commencing at a date in the future.

Deferred Retirement—The status of a participant who continues to work for the Company beyond age 65.

Disability—A disability, as determined by the Company, which may or may not qualify the participant to receive disability benefits from Social Security.

(23) **Early Optional Retirement**—Retirement before age 62 where the "Rule of 75" has been attained.

ERISA—The Employee Retirement Income Security Act of 1974, as amended.

5 Year Average Salary—The average of annual basic straight-time compensation for the sixty (60) consecutive months of accredited service which produce the highest average salary out of the last one hundred twenty (120) months of accredited service.

Lump-Sum Cash-Out—The payment, prior to normal retirement date and prior to attainment of the "Rule of 75", at the election of the participant, of the actuarial value of one hundred percent (100%) of his vested accrued pension.

Mandatory Retirement Date—The first day of the month following the attainment of age 70 by a participant. However, if the participant is exempt from the provisions of the Age Discrimination in Employment Act of 1967, as amended, because he or she is employed in a bona fide executive or a high policy-making position and otherwise satisfies the conditions permitting exemption, the mandatory retirement date is his or her normal retirement date.

Management Employee—An employee on the Company's management payroll.

Normal Retirement Date—The first day of the month following the participant's attainment of age 65.

Participant—A management employee hired on his sixtieth (60th) birthday or earlier.

Pension—A payment made monthly for life to an eligible participant.

Projected Pension—A pension determined at an intermediate step in a calculation using Projected Service.

(24) **Projected Service (Early Optional Retirement)**—Assumes continuous service to the first day of the month following attainment of age 62.

Project Service (Less than 75 points)—Assumes continuous service to the first day of the month following attainment of age 65.

Qualified Joint and Survivor Annuity—A benefit equal to 50% of a participant's pension, as reduced to provide this benefit, payable for life to a surviving spouse who was married to the participant at the time of retirement.

"Rule of 75"—The point in a participant's employment with the Company when the sum of his or her age plus years of accredited service equals 75. For this purpose only, the nearest whole year of age and service will be used.

Social Security Benefit—The estimated amount of annual primary insurance benefit payable at age sixty-five (65) under Title II of the Federal Social Security Act. For calculation of benefits payable by the plan, (1) in determining a participant's Social Security benefit in the event of retirement or termination at or after age sixty-two (62), it is assumed that the participant has no further covered earnings after termination of employment; and (2) in determining the participant's Social Security benefit in the event of retirement or termination prior to age sixty-two (62), it is assumed that the participant continued in service to age sixty-five (65) at his or her annual basic straight-time compensation at the termination of employment with the Company.

Social Security Disability—A disability which qualifies the participant to receive disability benefits from Social Security.

(25) **Surviving Spouse Benefit**—A benefit equal to 40% of a participant's pension payable to and for the life (or until remarriage) of the surviving spouse who was married to the participant at the time of participant's retirement and death.

Vested—Generally, the right to receive an accrued pension benefit because the participant has 10 or more years of accredited service.

Weekly Employee—An employee on the Company's weekly payroll.

Year for Vesting (Year of Accredited Service)—A 12-month period beginning each January 1 during which a participant has completed at least 1000 hours of service prior to normal retirement date, or as might be otherwise provided in the plan.

* * *

[Actuarial Tables Omitted]

89-223

FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1989

MARTIN A. SCHOTTENFELD,

Petitioner,

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and THOMAS J. GALVIN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondents' Brief in Opposition

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Dated: September 5, 1989

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NYC 212-732-6978 Westchester 914-681-1322 Long Island 516-222-0221
(7918)

Question Presented

The question presented in this case is whether the terms of respondent's pension plan, which credits service and salary up to age 65 only, were properly interpreted and applied to petitioner.

Listing of Parent Companies, Subsidiaries and Affiliates

Pursuant to Rule 28.1 of the Supreme Court Rules, the following is a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of Consolidated Edison Company of New York, Inc.:

Honeoye Storage Corporation (a subsidiary corporation).

Table of Contents.

	Page
Question Presented	i
Listing of Parent Companies, Subsidiaries and Affiliates	ii
Counter-Statement of the Case	2
Counter-Statement of the Facts	3
A. Company Pension Plan	3
B. Summary Plan Description Booklet	6
C. Notice Provided To Petitioner	7
Reasons Why the Petition Should be Denied	7
I. The court below correctly interpreted and applied the pension plan	7
A. The plan text does not provide pension credit for employment beyond age 65	7
B. 1975 and later pension plan amendments are applicable to petitioner and did not reduce petitioner's accrued pension benefits	9
II. There is no conflict between the circuits	11
Conclusion	12

TABLE OF AUTHORITIES.

STATUTES: Page

Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* 4

Employee Retirement Income Security Act of 1974 ("ERISA"), Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B) 2

ERISA Section 402(b)(3), 29 U.S.C. 1102(b)(3)..... 9

ERISA, 29 U.S.C. 1001 *et seq.* 3

Omnibus Budget Reconciliation Act of 1986 ("OBRA"), Section 9202, P.L. 99-509, 100 Stat. 1975-1978 (1986)..... 10

OBRA Section 9204(a), P.L. 99-509, 100 Stat. 1979 10

CASES:

Kolentus v. Avco Corp., 798 F.2d 949, 958 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987).... 9

Mahoney et al. [Hoefel] v. Atlas Tack Corp., 581 F.2d 1, 4, 6-7 (1st Cir. 1978), *cert. denied*, 440 U.S. 913 (1979) 11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

MARTIN A. SCHOTTENFELD,

Petitioner,

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and THOMAS J. GALVIN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Respondents' Brief in Opposition

The respondents, Consolidated Edison Company of New York, Inc., and Thomas J. Galvin, respectfully request that this Court deny the petition for writ of certiorari seeking review of the order and decision of the Second Circuit Court of Appeals in this case, which affirmed the judgment of the District Court substantially for the reasons set forth in the District Court's opinion. The order and decision of the Second Circuit and the opinion of the District Court are

reproduced in petitioner's Appendix at P3 to P6, and P7 to P18, respectively.*

Counter-Statement of the Case

This is an action instituted by Martin A. Schottenfeld against Consolidated Edison Company of New York, Inc. ("Con Edison"), and Thomas J. Galvin, Plan Administrator. Mr. Schottenfeld is a retired former management employee of Con Edison currently receiving a pension under Con Edison's Retirement Plan for Management Employees. The petitioner seeks an upward adjustment to his monthly pension benefit.

The Proceedings Below

Petitioner brought this action under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1132(a)(1)(B). He contended below that his pension benefits were improperly calculated by respondents in that respondents failed to include in their calculation petitioner's 23 months of service and salary between his 65th birthday and his retirement on July 1, 1986, just prior to his 67th birthday.

On December 22, 1987, petitioner moved in the District Court for partial summary judgment. Respondents cross-moved for summary judgment dismissing the complaint. In a memorandum opinion filed on August 22, 1988, the District Court granted summary judgment in favor of respondents. The court concluded a) that petitioner had misread the terms of the pension plan, b) that at no time during petitioner's employment did the plan provide that

*Parenthetical references denoted "(P_____)" are to the petitioner's Appendix to the petition for certiorari.

months or years worked after age 65 would be credited for pension purposes, and c) that petitioner was aware prior to his sixty-fifth birthday of respondents' view that his pension would remain unchanged should he continue to work beyond age 65 (P7-P18).

On August 26, 1988, the District Court entered judgment dismissing the complaint (P21-P22). On September 23, 1988, petitioner appealed to the Second Circuit (P23-P24), and on March 3, 1989, the Second Circuit affirmed substantially for the reasons set forth in the District Court's opinion (P3-P6).

Counter-Statement of the Facts

A. Company Pension Plan

Throughout the period of his employment, petitioner was covered by Con Edison-sponsored pension plans which credited earnings and years of service prior to age 65 for purposes of determining pension benefits but never provided credit for employment after age 65. To be more specific, under the pension plan in effect from 1969 (when petitioner joined Con Edison) to 1975, an employee could elect to retire at any one of three times: (a) upon attaining the normal retirement age of 62; (b) upon attaining the mandatory retirement age of 65; or (c) upon attaining the early optional retirement age of 45 or over provided the employee's age plus years of accredited service totalled not less than 75. The pension plan did not provide pension benefits for any period of service beyond age 65 because that was the mandatory retirement age.

Following enactment of ERISA, 29 U.S.C. 1001 *et seq.*, Con Edison adopted a new pension plan ("1975 Pension Plan"), effective August 1, 1975. The 1975 Pension Plan,

an ERISA defined benefit pension plan, retained the previous plan's requirement for mandatory retirement at age 65 (Exhibit A to Respondents' Appendix hereto, RA5).*

Between August 1, 1975 and January 1, 1983, the 1975 Pension Plan was amended several times. One such set of amendments deleted provisions referring to age 65 as the "mandatory" retirement age. The restated plan incorporating such amendment is reproduced as Exhibit C to Respondents' Appendix hereto (RA8-RA49). This amendment was made necessary because of the enactment in 1978 of amendments to the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, which prohibited employers from requiring that covered employees retire before attaining age 70. This amendment to the 1975 Pension Plan, however, added a new term, "Normal Retirement Date," which was defined as the first day of the month following a participant's attainment of age 65 (RA16). Thus, the 1975 Pension Plan retained the long-standing limitation that pension credits for service and earnings** would not continue to accrue beyond a participant's sixty-fifth birthday. This provision remained in the 1975 Pension Plan throughout the remaining period of petitioner's employment.

On January 1, 1983, a new plan, the Consolidated Edison Retirement Plan for Management Employees ("Management Pension Plan"), was adopted. This plan is reproduced as Exhibit D to Respondents' Appendix hereto (RA50-RA100). It covered all employees who were on the

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*Parenthetical references denoted "(RA____)" are to the Respondents' Appendix to this brief in opposition.

**The definition of the "Total Salary" used for computing a pension benefit was also amended to mean compensation prior to normal retirement date (RA14).

agement payroll as of December 31, 1982 and all management employees hired thereafter. Like its predecessor plans, the Management Pension Plan did not provide for the accrual of pension credit, *i.e.*, Accredited Service, for an employee's service or earnings beyond age 65 (RA57, RA59, RA72). Management employees such as petitioner who were on Con Edison's payroll on December 31, 1982, and retire under the Management Pension Plan after that date, receive a pension benefit on retirement equal to the greater of the benefits calculated under the old formula contained in the 1975 Pension Plan or the new formula that first appeared in the Management Pension Plan when it was adopted effective January 1, 1983 (RA56, RA73-RA74). That provision was continued in the Management Pension Plan as amended and in effect through the date when plaintiff retired on July 1, 1986 (RA110, RA131). The plan as amended through 1986 is reproduced as Exhibit E to Respondents' Appendix hereto (RA103-RA179).

Two concepts are central to the benefit calculation under both the old and new formulas: Accredited Service, and Normal Retirement Date. Only Accredited Service counts for pension credit purposes, and Accredited Service is defined as service prior to Normal Retirement Date (RA57, RA72; RA111, RA127). Normal Retirement Date is defined as the first day of the month following the Participant's attainment of age 65 (RA59; RA113). Thus, these provisions of the plan provide pension credit only for petitioner's service prior to his Normal Retirement Date, *i.e.*, August 1, 1984.

When petitioner retired on July 1, 1986, he received a retirement pension benefit calculated under the formula contained in the 1975 Pension Plan because it provided a greater dollar benefit to him than the new formula. Because

"Accredited Service" under the pension plan applicable to petitioner did not include service after Normal Retirement Date (age 65), petitioner's pension benefit did not include credit for his twenty-three months of service after his August 1, 1984 Normal Retirement Date.

B. Summary Plan Description Booklet

In January 1983, Con Edison prepared and distributed to its management employees a Summary Plan Description booklet describing the highlights of the Management Pension Plan. (RA180). The summary booklet contains the following language:

> Your *normal retirement* date under the plan is the first day of the month following your 65th birthday. . . . If you choose to continue working for the Company past your normal retirement date, your pension will be deferred until you actually retire. In such case, your pension will be equal to the amount you would have received had you retired at normal retirement date.

(RA185-RA186). Furthermore, the booklet states under the heading "Plan Documents" that:

> This booklet describes only the highlights of the plan and does not attempt to cover all its details. These are provided in the official plan text and Trust Agreement which legally govern the operation of the plan. In the event of any conflict between the official documents and the booklet, the former will prevail. (RA208-RA209).

C. Notice Provided To Petitioner

In 1984, petitioner received notification prior to his sixty-fifth birthday that he would not accrue additional pension benefits for any service after age 65. Petitioner signed a memorandum at his April 24, 1984 pre-retirement interview on the subject of "Pension Credit for Service After Attaining Age 65." The memorandum is reproduced as Exhibit E to Respondents' Appendix hereto (RA101-RA102). This memorandum clearly states: "As permitted by the law, you will not accrue pension service credit after your normal retirement date, which at Con Edison is the first day of the month following your attainment of age 65" (RA101).

Petitioner also received a copy of the summary plan description booklet for the Management Pension Plan that was distributed to all management employees in January 1983.

Reasons why the petition should be denied

I. The court below correctly interpreted and applied the pension plan

A. The plan text does not provide pension credit for employment beyond age 65

Each pension plan that petitioner participated in provided credit only for employment up to age 65:

— The pre-ERISA plan in effect when petitioner was hired in 1969 provided for mandatory retirement at age 65 (P9);

— the 1975 Pension Plan retained the same age 65 mandatory retirement rule (P9-P10, RA4-RA5);

— when the 1975 Pension Plan was amended to allow employment beyond age 65, the amendment also

provided that no pension credit would be granted for service beyond age 65 (P11, RA14, RA16, RA25); and

— when a new plan was adopted for management employees in 1983, it retained the former plan's provision that no pension credit would be granted for service beyond age 65 (RA57, RA59, RA72; RA111, RA113, RA127).

Petitioner acknowledged receiving notice of this feature of the pension plan in 1984 prior to reaching age 65 (P13).

The District Court found that the provisions of the pension plan giving credit for service and salary only up to age 65 were applicable to petitioner and defeated his claim for additional pension credit for service beyond age 65.

Petitioner argues here, as he did in the courts below, that the summary plan description booklet supports his claim for additional credit beyond age 65 (P14-P15). But the booklet itself states in unmistakable terms on page 2 that the normal retirement date is age 65, and that an employee who continues to work past age 65 will receive a pension upon retirement equal to the amount he would have received had he retired at age 65 (RA185-RA186). Thus, as the District Court decision noted (P15), "the booklet also clearly put plaintiff on notice that service after his 65th birthday would not be credited in calculating his pension. Moreover, as noted above, no prior pension plan provided pension credit for service after age 65."

Furthermore, the summary booklet states explicitly:

> This booklet describes only the highlights of the plan and does not attempt to cover all its details. These are provided in the official plan text and Trust

> Agreement which legally govern the operation of the plan. In the event of any conflict between the official documents and the booklet, the former will prevail. (RA208-RA209).

Thus, as stated by the District Court (P16), "even if the summary booklet conflicted with the official plan text, which it does not, the official plan text would control." *See, Kolentus v. Avco Corp.*, 798 F.2d 949, 958 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987):

> [W]hen the summary booklet expressly states that it is merely an outline of the pension plan and that the formal text of the plan governs in the event a question arises, the petitioners cannot rely on the general statements of the booklet but must look to the plan itself.

B. 1975 and later pension plan amendments are applicable to petitioner and did not reduce petitioner's accrued pension benefits

Petitioner argues that amendments made to the 1975 Pension Plan were made without the consent of the plan participants and therefore may not be applied to him. Petitioner also asserts that the amendments reduced his benefits.

Under Section 402(b)(3) of ERISA, 29 U.S.C. 1102(b)(3), every pension plan must make provision for amendments to the plan. The 1975 Pension Plan contains such a provision:

> The Company . . . reserves the right in its absolute discretion at any time and from time to time, to amend, modify or terminate in whole or in part the

> Plan and the contributions thereunder. . . . No such amendment or modification shall retroactively affect adversely employees' benefits under the Plan. (RA47).

Thus, pursuant to ERISA and the relevant plan provision, the plan may be freely amended at any time without the consent of plan participants if no accrued benefits are forfeited.

Amendments made to the 1975 Pension Plan to add the defined term "Normal Retirement Date" to mean the first day of the month following a participant's sixty-fifth birthday did not cause forfeiture of any employee's accrued benefits because, prior to the amendment, the plan already provided for mandatory retirement at age 65. Similarly, the amendments did not reduce petitioner's benefits under the prior plan because the plan never provided benefits for service beyond the then-mandatory retirement age of 65.* Therefore, such amendment is consistent with the authorization contained in ERISA and in the plan itself, did not reduce benefits, and is fully applicable to petitioner.

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*Petitioner's last service as a Con Edison employee was in 1986. After his retirement, ERISA Section 204(b)(1) was amended by Section 9202 of the Omnibus Budget Reconciliation Act of 1986 ("OBRA"), P.L. 99-509, 100 Stat. 1975-1978 (1986), to require continued benefit accrual for service beyond normal retirement age but, pursuant to OBRA Section 9204(a), P.L. 99-509, 100 Stat. 1979, "only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply." Thus, these changes in the law, while not applicable to petitioner, provide prospective assurance that situations similar to petitioner's will not likely reoccur in other cases.

II. There is no conflict between the circuits

Petitioner contends the decision below conflicts with the First Circuit decision in *Mahoney et al. [Hoefel] v. Atlas Tack Corp.*, 581 F.2d 1 (1st Cir. 1978), *cert. denied,* 440 U.S. 913 (1979). However, that decision is clearly distinguishable. Unlike this case, *Atlas Tack* is a pre-ERISA case decided under the common law of Massachusetts. It concerned a pre-1974 termination of a pension plan that resulted in the discontinuance of pension payments to the plaintiffs who had already retired with vested rights. *Atlas Tack, supra,* at 4. In the present case, a) petitioner's pension is provided pursuant to a qualified ERISA defined benefit pension plan, b) the plan has not been terminated, c) petitioner continues to receive a pension under the plan, and d) no amendment has caused any diminution or termination of petitioner's vested pension benefits.* Therefore, *Atlas Tack* is not relevant and does not create a conflict requiring a decision by this Court. In essence, that case stands for the principle that "pension plans be construed, where possible, to avoid the forfeiture of rights which an employee, through years of service, has earned. . . ." *Atlas Tack, supra,* at 6. However, this case presents no question of forfeiture; rather, the terms of the applicable plan simply do not, and never did, provide the post-age 65 benefits which petitioner seeks.

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*In addition, the *Atlas Tack* decision notes, at 6-7, that the effect of the pension plan change there was never explained to the plaintiffs. Here, in contrast, petitioner acknowledged receiving an explanation of the effect of the plan provision at issue before he reached age 65 (RA101).

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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